BellSouth Telecommunications, Inc.
Suite 2101
333 Commerce Street
Nashville, Tennessee 37201-3300

615 214-6301
Fax 615 214-7406

Guy M. Hicks
General Counsel

May 1, 1997

Mr. David Waddell, Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37238

Re: *United Telephone-Southeast, Inc. Tariff No. 96-201 to Reflect Annual Price Cap Adjustment*
Docket No. 96-01423

Dear Mr. Waddell:

Enclosed are the original and thirteen copies of BellSouth Telecommunications, Inc.'s Reply to the Consumer Advocate Division's Motion to Strike Briefs of UTSE and BellSouth in the above-referenced matter. A copy has been provided to counsel of record.

Very truly yours,

Guy M. Hicks

GMH/jem

Enclosure

BEFORE THE TENNESSEE REGULATORY AUTHORITY
Nashville, Tennessee

In Re: *United Telephone-Southeast, Inc. Tariff No. 96-201 To Reflect Annual Price Cap Adjustment*

Docket No. 96-01423

BELLSOUTH TELECOMMUNICATIONS, INC.'S REPLY TO THE CONSUMER ADVOCATE DIVISION'S "MOTION TO STRIKE BRIEFS OF UTSE AND BELLSOUTH"

It its latest filing in this matter, the CAD claims that BellSouth's "Brief Regarding Statutory Construction" somehow relies "upon proposed legislation, not enacted and . . . therefore not relevant." CAD's Motion to Strike at ¶3. BellSouth's "Brief on Statutory Construction," however, discusses sections 65-5-208 and 65-4-124, both of which obviously were enacted by the legislature. BellSouth's brief then addresses comments regarding directory assistance that both proponents and opponents of the enacted 1995 telecommunications legislation made during the Senate floor debates, the House floor debates, and the debates before the Joint Committee on State and Local Government. These statements made during legislative debates are part of the legislative history of the relevant statues. See In Re Conservatorship of Clayton, 914 S.W.2d 84, 90 (Tenn. Ct. App. 1995)(To the extent that it is necessary to resort to the legislative history of a statute to determine its meaning, it is appropriate to "consider the legislative debates surrounding the statute's enactment."). Accord Bemis Pentecostal Church v. State, 731 S.W.2d 897, 902 n.5 (Tenn. 1987)(Referring to Senate and House floor debates over the passage of an Act as "legislative history."). BellSouth's briefs, therefore, comply with the TRA's directives by properly addressing the legislative history regarding directory assistance.

The CAD's assertion that Blake v. Abbott, C.A. No. 03A01-9509-CV-00307 (Tenn. App. filed April 24, 1996) supports its motion to strike BellSouth's brief is simply flawed.[1] In Blake, the defendant argued that an indirect purchaser had no standing to sue under the Tennessee Trade Practices Act, but it did not cite any legislative history surrounding the passage of the Act to support its argument. Instead, it noted that "the General Assembly of Tennessee on three occasions has sought to pass legislation to expressly confer standing on indirect purchasers." Blake at 7. It then argued that the legislature's failure to pass such legislation proved that the existing statutes did not confer standing upon indirect purchasers. It is in the context of this strained argument that the Court stated that "proposed legislation, not enacted, has no consequence whatever upon the interpretation of an existing statute." Id . at 7.

Unlike the defendant in Blake, BellSouth has not attempted to argue that a bill that was never enacted somehow affects the meaning of the statutes at issue in this docket. Instead, BellSouth has cited compelling legislative history surrounding enacted statutes which establishes that directory assistance in not a basic service. The TRA, therefore, should deny the CAD's motion to strike BellSouth's brief because the Blake court's statement regarding bills that were never enacted simply does not apply to this matter.

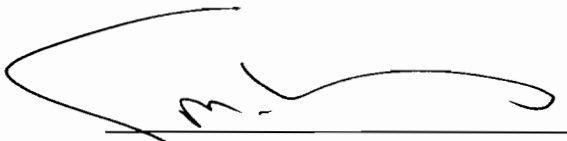
The following statement from the Blake decision, however, does apply to this matter: "[w]here the language contained within the four corners of a statue is plain, clear, and unambiguous and the enactment is within legislative competency, 'the duty of the courts is simple and obvious, namely, to say sic lix scripta [the law is so written], and obey it.'" Blake at 7. As both BellSouth and United have shown, the plain language of the relevant statutes makes it

[1] A copy of the unpublished Blake opinion is attached.

clear that directory assistance is not a basic service. The TRA, therefore, must reject the CAD's Motion to Strike and should approve United's directory assistance tariff.

Respectfully submitted,

BellSouth Telecommunications, Inc.



Guy M. Hicks
Patrick W. Turner
333 Commerce Street, Suite 2101
Nashville, TN 37201-3300
615/214-6301

CERTIFICATE OF SERVICE

I hereby certify that on May 1, 1997, a copy of the foregoing document was served on the parties of record, via U. S. Mail, postage pre-paid, addressed as follows:

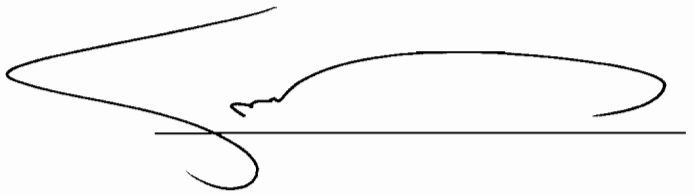
Ed Phillips, Esquire
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243-0505

Vincent Williams, Esquire
Consumer Advocate Division
426 Fifth Ave., N., 2nd Fl.
Nashville, TN 37243-0500

James B. Wright, Esquire
United Telephone-SE
14111 Capital Blvd.
Wake Forest, NC 27587-5900

Henry Walker, Esquire
Boult, Cummings, et al.
414 Union St., #1600
P. O. Box 198062
Nashville, TN 37219-8062

Val Sanford, Esquire
Gullett, Sanford, et al.
230 Fourth Ave., N., 3d Floor
P. O. Box 198888
Nashville, TN 37219-8888



1ST CASE of Level 1 printed in FULL format.

EILEEN M. BLAKE, Plaintiff-Appellant Vs. ABBOTT LABORATORIES, et al, Defendants-Appellees

C.A. NO. 03A01-9509-CV-00307

COURT OF APPEALS OF TENNESSEE

1996 Tenn. App. LEXIS 245

April 24, 1996, FILED

PRIOR HISTORY: [*1]

Blount County.

Original Opinion of March 27, 1996, Reported at: *1996 Tenn. App. LEXIS 184.*

JUDGES: Don T. McMurray, J., Herschel P. Franks, J., (Not participating), Clifford E. Sanders, Sr. J.

OPINION: ORDER

In this case the appellees have filed a petition for a rehearing. Upon consideration, we are of the opinion that the petition should be and is denied.

This 24th day of April, 1996.

Don T. McMurray, J.

Herschel P. Franks, J.

(Not participating)

Clifford E. Sanders, Sr. J.

DATE: APRIL 28, 1997

CLIENT:
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YOUR SEARCH REQUEST IS:
BLAKE V ABBOTT

NUMBER OF CASES FOUND WITH YOUR REQUEST THROUGH:
LEVEL 1... 2

2ND CASE of Level 1 printed in FULL format.

EILEEN M. BLAKE, on her own behalf and on behalf of all others similarly situated within the State of Tennessee, Plaintiff-Appellant vs. ABBOTT LABORATORIES, INC., BRISTOL-MYERS SQUIBB CO., and MEAD JOHNSON & CO., Defendants-Appellees

C.A. NO. 03A01-9509-CV-00307

COURT OF APPEALS OF TENNESSEE

1996 Tenn. App. LEXIS 184; 1996-1 Trade Cas. (CCH) P71,369

March 27, 1996, FILED

SUBSEQUENT HISTORY: [*1] Petition for Rehearing Denied April 24, 1996, Reported at: *1996 Tenn. App. LEXIS 245.*

PRIOR HISTORY: CIRCUIT COURT. BLOUNT COUNTY. HON. W. DALE YOUNG, JUDGE.

DISPOSITION: REVERSED AND REMANDED

COUNSEL: GORDON BALL, Knoxville, for the Appellant.

ROBERT J. WALKER and R. DALE GRIMES, Bass Berry and Simms, Nashville, for Bristol-Myers Squibb Co., and Mead Johnson Company.

CHARLES W. BURSON, Attorney General and Reporter, MICHAEL E. MOORE, Solicitor General, PERRY ALLAN CRAFT, Deputy Attorney General, and VERNON A. MELTON, JR., Amicus Curiae.

JUDGES: Don T. McMurray, J., CONCUR: Herschel P. Franks, J., (Not participating) Clifford E. Sanders, Sp. J.

OPINIONBY: Don T. McMurray

OPINION: OPINION

McMurray, J.

This case originated in the Circuit Court for Blount County. The complaint ostensibly attempted to state a class action against the defendants, alleging a violation of The Tennessee Unfair Trade Practices Act, (T.C.A. §§ 47-25-101 et seq.), hereinafter referred to as The Trade Practices Act, and The Tennessee Consumer Protection Act, (T.C.A. §§ 47-18-101 et seq.) n1 No order has been entered pursuant to Rule 23.03, Tennessee Rules of Civil Procedure, allowing the case to proceed as a class action. n2

n1 Abbott Laboratories, Inc., have reached a settlement with the plaintiff and are, therefore, not parties to this appeal.

[*2]

n2 The parties will be referred to as they appeared in the trial court, i.e., plaintiff and defendants.

The defendants filed a joint motion to dismiss under the provisions of Rule 12, Tennessee Rules of Civil Procedure, asserting that the plaintiff's complaint failed to state a claim upon which relief can be granted. The motion was sustained and the case dismissed. This appeal resulted. We reverse the judgment of the trial court.

In their motion to dismiss, the defendants proceeded on the theories that The Tennessee Trade Practices Act applies only to transactions that predominately affect intrastate commerce as opposed to interstate commerce. Secondly, they assert that The Tennessee Consumer Protection Act of 1977 does not apply to the type of conspiracy alleged by the plaintiff.

Our review of the trial court's action in granting a motion to dismiss pursuant to Rule 12, T.R.C.P., is rather limited. When considering a Rule 12 motion to dismiss, we are required to accept the allegations of the complaint as true. *Greenhill v. Carpenter, 718 S.W.2d 268 (Tenn. 1986).* Our scope of review [*3] is de novo with no presumption of correctness. *Montgomery v. Mayor of the City of Covington, 778 S.W.2d 444 (Tenn. App. 1988).*

THE FACTS n3

n3 The numbered paragraphs are set our verbatim as they appear in the plaintiff's complaint.

The plaintiff alleged that the defendants by independent action and conspiracy among themselves and others, not named as defendants, grossly overcharged Tennessee consumers who purchased baby food formula in the State of Tennessee. To substantiate this conclusion, the plaintiff alleges that:

* * * *

15. Defendants have been able to grossly overcharge for infant formula by various acts or practices, including, without limitation, banning, and conspiring to ban, direct advertising of infant formula to consumers and pursuing an aggressive effort to sell their products through physicians, nurses, and hospitals. Defendants refer to the medical market as the "ethical" market and to their sales strategy as "medical detailing."

* * * *

28. Beginning in 1980 and continuing [*4] through 1992, the defendants engaged in a continuing trust, combination, contract, arrangement and agreement, express or implied in violation of Section 47-25-101, et seq., of the Tennessee Unfair Trade Act which provides that "such combinations are hereby declared to be against public policy, unlawful and void."

29. In violation of section 47-25-101, et seq., of the Tennessee Unfair Trade Practices Act, the ... trust, combination, contract, arrangement, and agreement consisted of an agreement, arrangement and concert of action among the defendants, the substantial terms of which were to raise, fix, maintain and stabilize at artificially high levels the wholesale prices of infant formula sold in the United States, including the State of Tennessee. Such trust, combination, contract, arrangement and agreement had the effect, among others, of causing retail prices of infant formula purchased by plaintiff and other members of the class to be raised, fixed, maintained and stabilized at artificially high and non-competitive levels.

* * * *

32. For over twelve years, defendants have unilaterally committed, and have conspired amongst themselves to commit, an unfair or deceptive [*5] act or practice in violation of Section 47-18-109, et seq., of the Tennessee Consumer Protection Act in the sale and marketing of infant formula to thousands of Tennessee consumers at excessively high prices.

* * * *

34. In violation of the Tennessee Consumer Protection Act, defendants have supplied infant formula and engaged in unconscionable acts or practices in connection with its sales of infant formula to customers in Tennessee. Defendants unfair or deceptive acts or practices include the conspiracy to sell infant formula at an excessively high price.

DISCUSSION

Most of the plaintiff's allegations are conclusory rather than allegations of fact. A motion to dismiss for failure to state a claim upon which relief can be granted admits well-pled facts, not conclusions of the pleader. See *Swallows v. Western Electric Co., Inc., 543 S.W.2d 581, 583 (Tenn. 1976).*

The sole purpose of a Tenn. R. Civ. P. 12.02(6) motion to dismiss is to test the legal sufficiency of the complaint. *Sanders v. Vinson, 558 S.W.2d 838, 840 (Tenn. 1977); Holloway v. Putnam County, 534 S.W.2d 292, 296 (Tenn. 1976).* These motions are not favored, see *Moore v. Bell, 187 Tenn. [*6] 366, 369, 215 S.W.2d 787, 789 (1948),* and are now rarely granted in light of the liberal pleading standards in the Tennessee Rules of Civil Procedure. *See Barish v. Metropolitan Gov't, 627 S.W.2d 953, 954 (Tenn. Ct. App. 1981);* 5A Charles A. Wright & Arthur R. Miller, Federal Practice & Procedure §§ 1356 & 1357 (2d ed. 1990) ("Wright & Miller").

Tenn. R. Civ. P. 12.02(6) motions are not designed to correct inartfully worded pleadings. Wright & Miller § 1356, at 296. And so a complaint should not be dismissed, no matter how poorly drafted, if it states a cause of action. *Paschall's, Inc. v. Dozier, 219 Tenn. 45, 50-51, 407 S.W.2d 150, 152 (1966); Collier v. Slayden Bros. Ltd. Partnership, 712 S.W.2d 106, 108 (Tenn. Ct. App. 1985).* Dismissal under Tenn. R. Civ. P. 12.02(6) is warranted only when no set of facts will entitle the plaintiff to relief, *Pemberton v. American Distilled Spirits Co., 664 S.W.2d 690, 691 (Tenn. 1984),* or when the complaint is totally lacking in clarity and specificity. *Smith v. Lincoln Brass Works, Inc., 712 S.W.2d 470, 471 (Tenn. 1986).*

While it is not our role to create claims where none exist, *Donaldson v. Donaldson, 557 S.W.2d 60, [*7] 62 (Tenn. 1977),* we must always look to the substance of a pleading rather than to its form. *Usrey v. Lewis, 553 S.W.2d 612, 614 (Tenn. Ct. App. 1977).* Thus, when a complaint is tested by a Tenn. R. Civ. P. 12.02(6) motion to dismiss, we must take all the well-pleaded, material factual allegations as true, and we must construe the complaint liberally in the plaintiff's favor. *Lewis v. Allen, 698 S.W.2d 58, 59 (Tenn. 1985); Holloway v. Putnam County, 534 S.W.2d at 296; Lilly v. Smith, 790*

S.W.2d 539, 540 (Tenn. Ct. App. 1990).

Dobbs v. Guenther, 846 S.W.2d 270 (Tenn. App. 1992).

Testing the plaintiff's pleadings under the above rules, it appears that the only facts properly and well pled are that the defendants, along with others, conspired to fix prices and did fix prices of baby formula. n4 In reaching this conclusion, we are construing the pleadings most liberally and in favor of the plaintiff. We, therefore, find that the complaint states sufficient facts to allege price fixing.

n4 This statement is not intended to be a criticism of counsel. We agree with the observations of Judge McRae in Tacker v. Wilson, hereinafter cited, that a complaint ought not be dismissed for plaintiff's failure to state facts that ... only a discovery process might reveal. ... The proof [in antitrust litigation] is largely in the hands of the alleged conspirators.

[*8]

THE TENNESSEE TRADE PRACTICES ACT

Our next inquiry is whether there is an individual remedy available to indirect purchasers under The Tennessee Trade Practices Act, (T.C.A. §§ 47-25-101 et seq.). To this inquiry, we respond in the affirmative. T.C.A. § 47-25-106 provides as follows:

47-25-106. Recovery of consideration as remedy for damages. -- Any person who is injured or damaged by any such arrangement, contract, agreement, trust, or combination described in this part may sue for and recover, in any court of competent jurisdiction, from any person operating such trust or combination, the full consideration or sum paid by the person for any goods, wares, merchandise, or articles, the sale of which is controlled by such combination or trust.

It seems abundantly clear from the unambiguous provisions of T.C.A § 47-25-106, that there is an individual right, under the laws of this state, to maintain an action against any person or entity guilty of violating the provisions of Title 47, Chapter 25, whether the individual is a direct purchaser or indirect purchaser.

Apparently, this precise issue has not been addressed by the appellate courts of this state. The primary [*9] thrust of the defendants' argument that an indirect purchaser has no standing to maintain an action such as this is based on the decision in *Illinois Brick Co. v. Illinois, 431 U.S. 720, 52 L. Ed. 2d 707, 97 S. Ct. 2061 (1977).* In Illinois Brick the U.S. Supreme Court determined that indirect purchasers lack standing to recover under federal antitrust law. To support their position that a similar restriction is applicable to actions under the Tennessee Trade Practices Act, they assert that The General Assembly of Tennessee on three occasions has sought to pass legislation to expressly confer standing on indirect purchasers. We simply note that proposed legislation, not enacted, has no consequence whatever upon the interpretation of an existing statute. While such proposed legislation may indicate to some extent some of the individual legislators' interpretation of an existing statute, it is in no way controlling or, for that matter, relevant, to the court's duty to properly construe statutes.

The cardinal rule of Tennessee statutory interpretation is to ascertain and give effect to the intent and purpose of the Legislature in relation to the subject matter of the legislation, [*10] all rules of construction being but aids to that end. *Rippeth v. Connelly, 60 Tenn. App. 430, 447 S.W.2d 380, 381 (1969).* A statute must be construed so as to ascertain and give effect to the intent and purpose of the legislation, considering the statute as a whole and giving words their common and ordinary meaning. *Marion County Board of Commissioners v. Marion County Election Commission, 594 S.W.2d 681 (Tenn. 1980).* The court should assume that the Legislature used each word in the statute purposely and that the use of these words conveyed some intent and had a meaning and purpose. *Anderson Fish & Oyster Company v. Olds, 197 Tenn. 604, 277 S.W.2d 344 (1955).* See also *Crowe v. Ferguson, 814 S.W.2d 721 (Tenn. 1991).* Where the language contained within the four corners of a statute is plain, clear, and unambiguous and the enactment is within legislative competency, "the duty of the courts is simple and obvious, namely, to say sic lex scripta [the law is so written], and obey it." *Miller v. Childress, 21 Tenn. (2 Hum.) 320, 321-22 (1841).*

We find that the plaintiff in this case has standing to pursue an action for a violation of T.C.A. §§ 47-25-101 et seq., [*11] without reference to classification as a direct or indirect purchaser. There is no such limitation written into the statute. We do not find *Tacker v. Wilson, 830 F. Supp. 422 (W.D. Tenn. 1993),* cited by the defendants, to be persuasive authority to the contrary. In Tacker, the court disposed of the issue with the following statement:

Plaintiff has alleged no facts that would indicate that plaintiff transacted business with any of the defendants. As a private party, plaintiff's remedy for a violation of [T.C.A.] § 47-25-101 would be found in [T.C.A.] § 47-25-106, but plaintiff has stated no claim for which relief can be granted.

Id. page 430

The bare assertion that plaintiff has stated no claim for which relief can be granted can hardly be taken as a determination that a private person has no standing to pursue a remedy under T.C.A. § 47-25-106.

The next inquiry is whether The Tennessee Trade Practices Act applies to the circumstances of this case. The defendants insist that the Tennessee Trade Practices Act applies only to transactions that predominately affect intrastate commerce, and that since the complaint alleges a price-fixing conspiracy occurring [*12] outside of Tennessee, the plaintiff has failed to state a claim under Tennessee Law. We agree with the proposition of law as advanced by the defendants but not their conclusion. The Congress of the United States is vested with authority to regulate interstate commerce by virtue of The Constitution of the United States, Article 1, Section 8. Our court in examining the issue in *Lynch Display v. National Souvenir Center, 640 S.W.2d 837 (Tenn. App. 1982)* states that:

The Tennessee antitrust law applies to transactions which are predominately intrastate in character. The transaction does not have to be exclusively intrastate to be affected. The old constitutional doctrine of mutual exclusivity between state and federal laws affecting commerce has long been rejected. (Citations omitted).

Id. 840.

The question before us, however, is not whether the plaintiff's claim is, in fact, predominately intrastate commerce or predominately interstate commerce, but whether the plaintiff's complaint states a claim cognizable under the laws of the State of Tennessee. We hold that it does.

We have carefully examined the complaint. Contrary to the defendants' assertions, we fail to find [*13] an allegation that the alleged conspiracy took place outside the State or that the transactions complained of occurred outside the state. It is alleged that the principal offices of the defendants are located outside the State of Tennessee and that the defendants intended their actions to artificially maintain high wholesale levels of infant formula in the entire United States. From that information, alone, however, we cannot infer that the conspiracy, if any, occurred outside the State or that the transactions occurred outside the state. Since we are required take all the well-pled, material factual allegations as true, and construe the complaint liberally in the plaintiff's favor, we cannot dismiss a complaint on inferences which may reasonably be drawn from the pleadings unless the inferences are so incontestably conclusive as to exclude all other reasonable inferences. Such is not the case here.

It is settled in the undisturbed opinion of *Standard Oil Co. v. State, 117 Tenn 618, 100 S.W. 705 (1906),* quoted with approval in *State ex rel Cates v. Standard Oil Co. Of Kentucky, 120 Tenn 86, 110 S.W. 565 (1908),* that the "Legislature clearly intended to prohibit trusts, combinations, [*14] and agreements affecting all commerce not covered by the federal statute, and upon which it had a right to legislate. It did not intend to stop short of its power or to exceed it." Id. 580.

In State ex rel Cates, the court discussed the issue of "importation" as used in the statute. The court opined that once a product was imported into the state from other states or countries and became commingled with the common mass of property in this state, it is no longer an article of interstate commerce. "It is well settled that commerce in such imported articles may be regulated by state legislation." (Citations omitted).

We find nothing in the complaint or the entire record before us which justifies a finding by the trial court, on a Rule 12 motion, that the transactions complained of predominantly affect interstate commerce as opposed to intrastate commerce. If it is later determined by some manner cognizable under Tennessee law that the actions complained of by the plaintiff predominately affect interstate commerce, then the defendants must prevail on this issue. On the other hand, if it is determined by any method cognizable under Tennessee law, that the transactions complained of [*15] predominately affect intrastate commerce, the plaintiff may proceed in this action.

In sum and substance, it is not determinable from the record before us that the acts complained of by the plaintiff predominately affect interstate commerce. We note that all parties argued facts, in the trial court, in their briefs and before this court that are not contained in the record before us. In reviewing a Rule 12 motion, we are not at liberty to assume facts not in the record. We, therefore, reverse the judgment of the trial court on this issue and hold that the complaint does state a cause of action under the Tennessee Trade Practices Act.

THE TENNESSEE CONSUMER PROTECTION ACT OF 1977

We must next look to the propriety of the trial court's judgment that the plaintiff cannot maintain this action under The Tennessee Consumer Protection Act of 1977, T.C.A. §§ 47-18-101 et seq.

T.C.A. § 47-18-109 provides in pertinent part as follows:

47-18-109. Private right of action - Damages - Notice to division. -- (a)(1) Any person who suffers an ascertainable loss of money or property, real, personal, or mixed, or any other article, commodity, or thing of value wherever situated, as a result [*16] of the use or employment by another person of an unfair or deceptive act or practice declared to be unlawful by this part, may bring an action individually to recover actual damages. (Emphasis added).

Our inquiry is whether price fixing is an unfair or deceptive act or practice. While price fixing is not among the unfair or deceptive acts or practices specifically enumerated in T.C.A. § 47-18-104, it is clear that the enumeration of unfair or deceptive acts or practices is not exclusive nor limited only to those acts enumerated. Paragraph (b)(27) specifically states that "engaging in any other act or practice which is deceptive to the consumer or to any other person" falls within the scope of the statute.

In any event, reasonable minds cannot differ, in good conscience, that price fixing is not an unfair practice. We have hereinbefore set out the guidelines for statutory interpretation. We note that the terms unfair or deceptive as used in the Consumer Protection Act are in the disjunctive. We are required to give each word its common and ordinary meaning.

The term "unfair" is defined as follows:

Contrary to laws or conventions, especially in commerce; unethical; unfair [*17] trading.

American Heritage Dictionary of the English Language, Third Edition, Houghton-Mifflin Company, (1992).

1. Not just or impartial; biased, inequitable,

2. Dishonest, dishonorable, or unethical in business dealings involving relations with employees, customers, or competitors.

Webster's New Twentieth Century Dictionary, unabridged, Second Edition, Prentiss Hall Press, (1983).

Defendants argue that since The Tennessee Trade Practices Act predates the Consumer Protection Act, and since it specifically addresses the conduct for which plaintiff seeks relief the construction sought by the plaintiff would result in a repeal by implication of part of The Tennessee Trade Practices Act. In support of this position, the defendants again assert that the General Assembly intended The Tennessee Trade Practices Act to apply only to conduct that predominantly affects intrastate commerce. Further, the defendants assert specifically, that to allow the plaintiff to prosecute a claim as an indirect purchaser under The Tennessee Consumer Protection Act of 1977 would conflict with The Tennessee Trade Practices Act. We expressly reject this argument based on our finding [*18] hereinabove stated that under our Tennessee Trade Practices Act, a plaintiff has standing as an indirect purchaser to maintain an action.

Further and finally, we note that T.C.A. §§ 47-18-102 and 47-18-112, provide respectively:

47-18-102. Purposes. -- The provisions of this part shall be liberally construed to promote the following policies:

(1) To simplify, clarify, and modernize state law governing the protection of the consuming public and to conform these laws with existing consumer protection policies;

(2) To protect consumers and legitimate business enterprises from those who engage in unfair or deceptive acts or practices in the conduct of any trade or commerce in part or wholly within this state;

(3) To encourage and promote the development of fair consumer practices;

(4) To declare and to provide for civil legal means for maintaining ethical standards of dealing between persons engaged in business and the consuming public to the end that good faith dealings between buyers and sellers at all levels of commerce be had in this state; and

(5) To promote statewide consumer education.

47-18-112. Supplementary law.-- The powers and remedies provided [*19] in this part shall be cumulative and supplementary to all other powers and remedies otherwise provided by law. The invocation of one power or remedy herein shall not be construed as excluding or prohibiting the use of any other available remedy.

We interpret the foregoing sections of The Tennessee Consumer Protection Act of 1977, to mean what they say, i.e., the provisions of The Tennessee Consumer Protection Act of 1977, are cumulative remedies in all respects and their application under the circumstances of this case, at least for the purposes of a Rule 12 motion, are not inconsistent with the application of The Tennessee Trade Practices Act.

Parenthetically, we note that the same limitations must apply to the Tennessee Consumer Protection Act of

1977, as those applied to the Tennessee Trade Practices Act. If it is determined that the acts complained of predominately affect interstate commerce, the defendants must prevail. It is a well-settled principle of law that one cannot do indirectly what cannot be done directly. See i.e., *Scott v. McReynolds, 225 S.W.2d 401 (Tenn. App. 1952); Roberts v. Roberts, 767 S.W.2d 646 (Tenn. App. 1988)* and *Haynes v. City of Pigeon [*20] Forge, 883 S.W.2d 619 (Tenn. App. 1994).*

We are of the opinion that the judgment of the trial court sustaining the Rule 12 motion and dismissing the plaintiff's complaint was error. We accordingly reverse the judgment of the trial court.

Costs of this cause are taxed to the defendants and this case is remanded to the trial court for the collection thereof and for such other and further action as may be necessary and not inconsistent with this opinion.

Don T. McMurray, J.

CONCUR:

Herschel P. Franks, J.

(Not participating)
Clifford E. Sanders, Sp. J.