

STATE OF MAINE
KENNEBEC, SS.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO.

STATE OF MAINE,)	
)	
Plaintiff)	
)	
v.)	COMPLAINT
)	(Injunctive Relief Requested)
C.N. BROWN COMPANY,)	
)	
Defendant)	
)	

INTRODUCTION

1. This action is brought by the State of Maine pursuant to the Unfair Trade Practices Act, 5 M.R.S.A. §§ 205-A -214 (1989 & Supp. 1990);

(a) to enjoin Defendant C.N. Brown Company ("C.N. Brown") from engaging in unfair methods of competition and unfair and deceptive practices and in its operation of six gasoline stations located on the Maine Turnpike which it leases from the Maine Turnpike Authority (the "Authority"), and to enjoin C.N. Brown from violating provisions of the lease governing the maximum prices it may charge at the stations for retail gasoline and diesel;

(b) to recover from C.N. Brown, as restitution or unjust enrichment, sums realized by C.N. Brown as a result of its practice of charging prices for gasoline and diesel in excess of the maximum prices allowed by the lease, for the period December, 1988 through the present; and

(c) to obtain civil penalties, with costs and fees, under the Unfair Trade Practices Act.

PARTIES

2. Plaintiff the State of Maine is a sovereign state, and brings this action by and through its Attorney General in its sovereign capacity and as parens patriae for the protection of the public.

3. Defendant C.N. Brown is a Maine corporation with headquarters in South Paris, Maine, which is in the business of supplying retail gasoline and diesel to consumers at numerous locations throughout the State, including six stations located on the Maine Turnpike, which C.N. Brown leases from the Authority.

JURISDICTION AND VENUE

4. This Court has jurisdiction over this action pursuant to ~~5 M.R.S.A. § 209~~ and 4 M.R.S.A. § 105 (Supp. 1990). Venue is proper in this Court under 5 M.R.S.A. § 209 and 14 M.R.S.A. § 501 (1980).

STATUTE: UNFAIR TRADE PRACTICES ACT

5. Pursuant to 5 M.R.S.A. § 207 (1989), it is a violation of the Unfair Trade Practices Act to engage in unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce in the State of Maine.

6. Pursuant to 5 M.R.S.A. § 209, the Attorney General may seek an injunction and restitution for a violation of the Unfair Trade Practices Act. This provision further authorizes

the Attorney General to recover a civil penalty of up to \$10,000 for each intentional violation of the Unfair Trade Practices Act.

THE MAINE TURNPIKE

7. The Maine Turnpike (the "turnpike") is a limited access highway running between York and Augusta, Maine. The turnpike is operated by the Authority, a body corporate and politic created by statute for that purpose, pursuant to 23 M.R.S.A. §§ 1961-1981 (Supp. 1990). Users of the turnpike pay tolls to use the highway. Users who require food or fuel while travelling the turnpike must make their purchases from vendors permitted by the Authority to operate at locations on the turnpike leased from the Authority, or must leave the turnpike to make such purchases, passing through a toll booth to exit, and again to reenter. It is time-consuming and ~~inconvenient for users to leave the turnpike~~ in order to purchase food or fuel.

THE LEASE

8. There are six stations for the retail sale of gasoline and diesel located on the turnpike. The Authority leases all six of these stations to C.N. Brown pursuant to a lease entered into on November 25, 1988, for a term commencing December 14, 1988 and ending December 31, 1993. This term is automatically renewed for an additional five-year term unless the Authority provides a notice of nonrenewal to C.N. Brown on or before July

1, 1993. A copy of the lease is attached hereto and incorporated herein as Appendix A.

9. Pursuant to the lease, C.N. Brown is required to sell three grades of gasoline and one grade of diesel at each of the six stations. The lease sets maximum limits on the purchase price which C.N. Brown may charge for these products. The maximum price for a given grade of gasoline or diesel allowed by the lease is: a base figure as bid by C.N. Brown in its lease proposal (50.86¢ per gallon for all grades of gasoline, 60.15¢ for diesel), plus the median of the high and low prices quoted for that grade and type of fuel at Portland, Maine under the heading "Weekly Gasoline Prices" in The Journal of Commerce. These maximum prices are adjusted weekly as of 7 a.m. each Thursday (beginning December 13, 1988) based on prices quoted in The Journal of Commerce on the proceeding Monday.

MAXIMUM PRICE VIOLATIONS

10. During the period December 14, 1988 through April 30, 1991, consisting of 123 weeks, a total of 492 maximum prices were in effect pursuant to the lease (4 per week for three grades of gasoline and one of diesel). During this period, C.N. Brown has charged prices in excess of the maximum allowable on at least one commodity in each of 102 weeks, violating a total of 259 of the 492 maximum prices then in effect. During this period, C.N. Brown violated allowable

maximum prices for gasoline on 248 occasions (67% of 369 maximums); it violated allowable maximum prices for diesel on 11 occasions (9% of 123 maximums). During the first five months of the lease, C.N. Brown violated maximum prices in only 2 of 21 weeks, (4 of 84 maximums, or less than 5%); while from May 1, 1989 through April 30, 1991, there were violations in each of 100 weeks. During the latter period, C.N. Brown violated allowable maximum prices for gasoline on 244 occasions (80% of 306 maximums).

11. Since approximately May 1, 1991, C.N. Brown has complied fully with the maximum price provisions of the lease.

12. The amounts by which C.N. Brown exceeded the maximum prices allowable under the lease, during the period December 14, 1988 through April 30, 1991, ranged from 0.1¢ to 16¢ per gallon. In most cases, the extent of the violation was less than 1¢ per gallon.

13. Over the term of the lease to date, C.N. Brown has realized a total of \$52,420.59 as a result of its violations of allowable maximum prices. Of this amount, \$46,809.89 was attributable to gasoline overcharges; the remainder, \$5,610.76, to diesel overcharges.

CAUSE OF ACTION

(Unfair methods of competition and
unfair and deceptive trade practices)

14. Paragraphs 1 through 13 above are realleged and incorporated herein by reference.

15. The purpose of the maximum price provisions of the lease is to protect users of the turnpike from the possibility that the lessee of turnpike stations might attempt to extract monopoly profits from purchasers of fuel.

16. C.N. Brown's practice of violating allowable prices under the lease was unfair, in that, without limitation:

(a) the injury resulting to users of the turnpike from C.N. Brown's practice of charging prices for gasoline and diesel in excess of the maximums allowable under the lease ~~was substantial;~~

(b) the injury was not offset by any consumer or competitive benefits flowing from the practice;

(c) the injury could not reasonably have been avoided by turnpike users;

(d) the practice violated public policy in that the provisions violated were specifically designed to protect the public from abuse of the monopoly granted under the lease; and

(e) the practice was unethical, oppressive and unscrupulous.

17. C.N. Brown's practice of violating maximum prices allowable under the lease was deceptive, in that, without limitation:

(a) C.N. Brown's posted prices for fuel contained an implicit and false representation to turnpike users that such prices were in accordance with its lease agreement with the Authority, on which turnpike users relied to their detriment;

(b) C.N. Brown failed to disclose a material fact to turnpike users, namely, that its prices were in violation of the lease, thereby misleading turnpike users to their detriment.

18. C.N. Brown obtained the right to be the sole purveyor of gasoline and diesel fuels on the turnpike by making certain promises to the Authority, including its promise to abide by the maximum prices set forth in the lease. By its breach of that promise, C.N. Brown has engaged in an unfair method of competition with respect to all other purveyors of gasoline and diesel fuels who bid or could have bid for the turnpike fuel concession granted in the lease.

19. C.N. Brown's violations of the maximum prices allowable under the lease constitute unfair methods of competition and unfair and deceptive acts or practices in violation of the Maine Unfair Trade Practices Act, 5 M.R.S.A. §§ 205-A -214.

20. C.N. Brown's repeated and consistent violations of the maximum prices allowable under the lease in each of 100 weeks during the period May 1, 1989 through April 30, 1991 constitute, for each such week, a separate intentional violation of the Maine Unfair Trade Practices Act, 5 M.R.S.A. §§ 205-A -214.

RELIEF REQUESTED

WHEREFORE, Plaintiff the State of Maine respectfully requests that this Court:

A. Declare that C.N. Brown's practice of violating the maximum price provisions of the lease is an unfair method of competition and an unfair and deceptive trade practice, in violation of 5 M.R.S.A. § 207, and that C.N. Brown engaged in separate, intentional violations thereof in each of 100 weeks during the period May 1, 1989 through April 30, 1991;

B. Issue a preliminary and permanent injunction pursuant to 5 M.R.S.A. § 209 enjoining C.N. Brown from violating the maximum price provisions of the lease, as long as it shall continue in effect, or of any future lease governing the same premises, and enjoining C.N. Brown from engaging in unfair methods of competition or unfair or deceptive practices in any aspect of its operation of those premises;

C. Order C.N. Brown to pay to the State of Maine the sum of \$52,420.59 as restitution or unjust enrichment, pursuant to 5 M.R.S.A. § 209, to be distributed in accordance with the further instructions of this Court;

D. Order C.N. Brown to pay to the State of Maine a civil penalty in the aggregate amount of \$20,000 on account of its intentional violations of 5 M.R.S.A. § 207;

E. Order C.N. Brown to pay the costs of this suit and the Attorney General's investigative costs and attorney fees in the amount of \$10,000; and

F. Grant such other relief as the Court may consider just and equitable.

Dated:

MICHAEL E. CARPENTER
Attorney General

FRANCIS E. ACKERMAN
Assistant Attorney General
Consumer & Antitrust Division
State House Station 6
Augusta, Maine 04333
(207) 626-8800
