

IN THE MATTER OF:

DARLING'S, A Corporation Incorporated Under The Laws Of The
State Of Maine

ASSURANCE OF DISCONTINUANCE

1. This Assurance of Discontinuance ("Assurance") is entered into by the Attorney General of the State of Maine acting pursuant to 5 M.R.S.A. § 210 and Darling's, a Maine corporation, with its corporate offices at 96 Parkway South, Unit 1, P. O. Box 277, Brewer, Maine 04412-0277.

I. FINDINGS OF THE ATTORNEY GENERAL

A. Environmental/Materials Charge

2. Darling's engages in the sale and repair of new and used motor vehicles. When charging a customer for a motor vehicle repair, Darling's includes a miscellaneous charge that has been called "Environmental/Materials." The amount of this charge is eight (8%) percent of the total labor charge, with a cap of \$40 before December 1, 2003. The cap or ceiling is now \$25. This charge is for such shop supplies as rags, oil, lubricants, solvents that may or may not be used in a specific repair job.

3. This "Environmental/Materials" charge is made even if the repair service involved little or no expense for miscellaneous shop supplies.

4. Pursuant to 29-A M.R.S.A. § 1805, all Maine motor vehicle repair facilities must post a notice for their customers which states their actual per-hour labor charge.

5. Because the “Environmental/Materials” charge is levied on each repair, the Darling’s posted labor charge has therefore been eight (8%) percent less than is actually charged consumers, until a ceiling was reached.

6. Because of this, the Attorney General finds that the Darling’s posted labor charge can be eight (8%) percent less than its actual labor charge, and therefore the posting violates 29-A M.R.S.A. § 1805. Pursuant to 29-A M.R.S.A. § 1807, violation of this law is also a *per se* violation of the Maine Unfair Trade Practices Act.

7. In addition, labeling this eight (8%) percent charge as an “Environmental/Materials” expense is misleading and in violation of 5 M.R.S.A. § 207, because it implies to consumers that this is a government-mandated charge.

B. Implied Warranty Disclaimer

8. In the past the Darling’s repair receipt has included a disclaimer which read as follows:

The factory warranty constitutes all of the warranties with respect to the sale of this item/items. The seller hereby expressly disclaims all warranties, either express or implied, including any implied warranty of merchantability or fitness for a particular purpose, and the seller neither assumes nor authorizes any other person to assume for it any liability in connection with the sale of this item/items.

9. This disclaimer of implied warranties violates 11 M.R.S.A. § 2-316 (5), which reads in relevant part:

Any language, oral or written, used by a seller or manufacturer of consumer goods and services, which attempts to exclude or modify any implied warranties of merchantability and fitness for a particular purpose or to exclude or modify the consumer’s remedies for breach of those warranties, shall be unenforceable. Consumer goods and services are those new or used goods and services,

including mobile homes, which are used or bought primarily for personal, family or household purposes.

Pursuant to 11 M.R.S.A. § 2-316 (5) (a), violation of this law is also a *per se* violation of the Maine Unfair Trade Practices Act.

II. ASSURANCES

10. Darling's shall cease charging an "Environmental/Materials" charge or other miscellaneous charges that are a percentage of its posted hourly labor rate.

11. Darling's shall not charge a customer for disposal of fluids or for miscellaneous shop supplies except for services or supplies that were actually provided that customer.

12. Darling's shall not disclaim the Maine Implied Warranty Law on its repair receipts or in written or verbal communications with its customers.

13. Darling's shall provide a copy of this Assurance to all of its officers and employees who have managerial responsibilities or who deal with customer billing.

III. COMPLIANCE

14. In the event the Attorney General believes that Darling's has committed a violation of this Assurance and intends to file a motion or other pleading for violation of the Assurance, then the Attorney General shall first give Darling's ten (10) business days notice before filing such motion or pleading. Notice shall be given by regular mail addressed to the attention of: John Darling, 96 Parkway South, Unit 1, PO Box 277, Brewer, Maine 04112-0277. The giving of such notice shall not prevent the Attorney General from beginning any such proceeding following the expiration of the ten business day period. Prior to the expiration of such ten business day period, Darling's may respond

in writing to the Attorney General with any information that it wishes to provide regarding the alleged violation of the Assurance and, if Darling's so requests, it will meet during such time period with a representative of the Attorney General to attempt to resolve any such alleged violation. Darling's agrees that it shall not institute any proceeding or action, including but not limited to any declaratory judgment action against the State of Maine during such period.

IV. GENERAL PROVISIONS

15. This Assurance shall be governed by the law of the State of Maine, 5 M.R.S.A. § 210.

16. Darling's agrees that this Assurance constitutes a legally enforceable obligation of Darling's in accordance with its terms.

17. This Assurance does not constitute an approval by the State of Maine of any of Darling's sales presentation materials or practices and Darling's shall not make any representation to the contrary.

18. The effective date of this Assurance shall be Friday, March 26, 2004.

19. Nothing in this Assurance shall be construed as a waiver of any private rights of any person.

20. Any violation of this Assurance shall constitute *prima facie* evidence of an act or practice declared to be unlawful by 5 M.R.S.A. § 207.

21. This Assurance constitutes the entire agreement of the parties hereto and supersedes all prior agreements or understandings, whether written or oral, between the parties and/or their respective counsel with respect to the subject matter hereof. Any

amendment or modification to this Assurance must be in writing and signed by duly authorized representatives of all the parties hereto.

22. The undersigned representative for each party certifies that he or she is fully authorized by the party he or she represents to enter into the terms and conditions of this Assurance and to legally bind the party he or she represents to the Assurance.

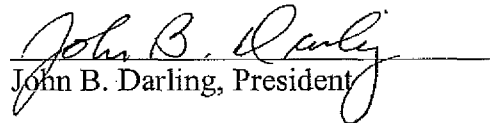
V. SIGNATURE

23. We the undersigned, who have authority to consent and sign on behalf of the parties in this matter, hereby consent to the form and contents of the foregoing Assurance and to its entry:

Dated:


3/24/04

For Darling's:


John B. Darling, President

Dated: 3/29/04

For the State of Maine:


JAMES A. MCKENNA
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