

STATE OF MAINE  
PENOBSCOT, SS.

SUPERIOR COURT  
CIVIL ACTION  
DOCKET NO. CV-93-

*Formal  
Action*

STATE OF MAINE,	)
	)
Plaintiff	)
	)
v.	)
	)
JOHN L. DAVIS,	)
of Bangor, Maine d/b/a	)
THE MEAT MARKET,	)
an enterprise with a	)
principal place of business	)
in Bangor, Maine,	)
	)
Defendant	)

VERIFIED COMPLAINT  
(Injunctive Relief  
Sought)

INTRODUCTION

1. The Attorney General brings this action on behalf of the State of Maine under the Unfair Trade Practices Act, 5 M.R.S.A. §§ 206-214, the Consumer Credit Code, 9-A M.R.S.A. §§ 5-101 through 5-202 and 6-110 through 6-113, and the Maine Weights and Measures Law, 10 M.R.S.A. §§ 2621-2629. The Attorney General seeks: declaratory relief; preliminary and permanent injunctions prohibiting Defendant from continuing unfair, deceptive and illegal conduct; an accounting; restitution; and, monetary penalties.

PARTIES AND JURISDICTION

2. Plaintiff State of Maine is a sovereign state vested with authority to bring this action pursuant to statutes cited herein, its Constitution and common law.

3. Defendant John L. Davis is the proprietor of an enterprise engaging in the retail meat business on Union Street

in Bangor, Maine as "The Meat Market." By the activity of himself, his agents or employees (collectively "Defendant"), Defendant has subjected himself and his business to the jurisdiction of this Court, as well as the regulatory authority of the State and its Attorney General.

STATUTORY BACKGROUND  
(Unfair Trade Practices Act)

4. The Unfair Trade Practices Act, 5 M.R.S.A. § 207, makes it unlawful to engage in any unfair or deceptive acts or practices in the conduct of any trade or commerce.

5. Pursuant to 5 M.R.S.A. § 209, intentional violations of the Unfair Trade Practices Act carry a penalty of up to \$10,000 per violation.

(Consumer Credit Code)

6. The Consumer Credit Code, 9-A M.R.S.A. § 5-108 makes credit transactions which are unconscionable or induced by unconscionable conduct unenforceable.

7. Title 9-A M.R.S.A. § 5-115 prohibits any creditor or person acting for him from inducing a consumer to enter into a consumer credit transaction by misrepresentation of a material fact with respect to the terms and conditions thereof.

8. Title 9-A M.R.S.A. § 5-117 prohibits a creditor/seller from misrepresenting any material fact relating to the terms or conditions of sale, creating an impression that is false or which the seller does not believe to be true, or promising performance which the seller does not intend to make or which the seller knows will not be made.

9. Pursuant to 9-A M.R.S.A. § 6-113, willful or repeated violations of the Consumer Credit Code carry a penalty of not more than \$5,000.

(Weights and Measures Law)

10. The Weights and Measures Law, 10 M.R.S.A. § 2621, prohibits offering, selling or exposing for sale less than a quantity represented.

11. Title 10 M.R.S.A. § 2622 prohibits representation of the price of any commodity or service sold, offered or advertised for sale by weight, measure or count in any manner calculated or tending to mislead or deceive in any way.

12. Title 10 M.R.S.A. § 2624 prohibits bulk sales of commodities in excess of \$20 without accompaniment by a delivery ticket containing information regarding the name and address of vendor and purchaser, the date of delivery, the quantity delivered, the quantity upon which price is based, the identity of the commodity (including any representation regarding quality), and the count of packages.

FACTS

13. Defendant is engaged in the retail meat business with a store located at 1358 Union Street, Bangor, Maine.

14. Defendant solicits consumers to purchase bulk quantities of beef by advertising, including newspaper advertising. Copies of newspaper advertisements placed by Defendant in The Bangor Daily News are annexed hereto and incorporated by reference herein as Exhibits A and B.

Defendant has run these or similar advertisements in The Bangor Daily News for since at least March of 1993.

15. Defendant's advertising represents availability of "specials". For example, "Special No. 1" consists of 150 pounds of beef at a price of \$1.99 per pound (\$1.79 per pound plus a 20¢ per pound charge for cutting and wrapping). Defendant also advertises a "Special No. 2" at a total price of \$2.09 per pound.

16. Defendant's advertisements represent that a "free bonus pack" of 100 pounds of assorted meats will be given to anyone who opens an account and purchases "Special No. 1". A "45 pound bonus" at "absolutely no charge" is given to anyone who purchases "Special No. 2".

17. Defendant's advertising also mentions beef at \$7.99 per pound, sometimes referred to as "Special #3". "Special #3" is identified only as "Trimmed Beef Orders" at "\$5.99 lb. to \$7.99 lb." for "Price Volume Buying." Defendant's advertisement contains no further explanation of "Special #3" or the \$7.99 beef. The description of the \$7.99 beef is proportionally much smaller in size than the descriptions of the other two "specials".

18. The effect of Defendant's advertisements is to entice consumers to make an appointment to purchase the quantities of beef advertised in Special No. 1 and Special No. 2 at a price of \$1.99 - \$2.09 per pound.

19. Many of the consumers who respond to Defendant's advertising drive substantial distances in order to take advantage of Defendant's low price "specials".

20. Defendants encourage consumers to make an appointment prior to coming to The Meat Market. Consumers who arrive at the appointed time often wait a considerable period of time prior to being waited on. Consumers have waited for periods of up to four hours after the time of their appointment in order to purchase the advertised \$1.99 per pound beef.

21. Defendant prominently displays in the waiting area of his store a price of "\$1.99". That price is identical to or approximately the same as the price per pound for meat in Defendant's advertised "specials."

22. Despite Defendant's large, frequent newspaper advertisements for low priced beef, Defendant routinely represents to consumers interested in purchasing the advertised beef that the advertised "specials" are unavailable and to disregard them. Defendant describes the advertised "specials" as "examples." In telling consumers that the "specials" are unavailable and to disregard them, Defendant represents that the consumer must purchase a larger amount of meat than the 150 and 130 pound advertised "specials."

23. Defendant describes the advertised "specials" as "examples" despite the fact that the advertisements are written in a manner intended to attract consumers to The Meat Market.

24. Consumers who express an interest in purchasing the beef advertised in Special No. 1 and Special No. 2 are taken to a cold storage locker and shown hanging hindquarters of beef. The hanging meat shown to consumers has not had the fat trimmed from it and is cut in such a manner as to display to the consumer the amount of fat on the piece of meat.

25. Defendant routinely disparages the hanging untrimmed meat which represents the beef advertised in Defendant's "specials." In disparaging the advertised hanging beef from which the fat has not yet been trimmed, Defendant frequently compares it to meat which is already trimmed and packaged. Defendant's statements in disparaging the hanging beef include:

"You don't eat fat like that, do you?"

"You don't want the meat with fat. You want the lean."

"This isn't anything you really want is it?"

"You wouldn't want this. Ninety nine percent of my customers don't buy this; they buy this trimmed beef."

Defendant also makes statements to the effect that if the consumer is not going to use the fat and bone that will be cut from the beef, Defendant does not want to sell the consumer the untrimmed beef.

26. Defendant also discourages the purchase of the untrimmed beef and encourages the purchase of the trimmed meat by representing that the total per pound price of the untrimmed meat, once it is trimmed and cut, is more than the price of the trimmed meat. Defendant also states to customers interested in purchasing the advertised low priced beef that a 300 pound hindquarter will yield only 78 pounds of meat after the fat and bone is removed and that they would be better off purchasing the trimmed meat.

27. Defendant's advertisements do not disclose that the beef advertised at \$1.99 - \$2.09 per pound is untrimmed, hanging meat from which a substantial portion will be unusable bone and fat.

28. Despite Defendant's representation that the trimmed meat is more cost effective than the untrimmed meat, Defendant does not disclose to consumers that they will be charged for fat trimmed from the trimmed meat. For example, a consumer who purchased 171 pounds of trimmed meat was charged for 13 pounds of "cutting trim loss."

29. In encouraging consumers to purchase the trimmed beef, Defendant does not disclose that the trimmed meat, including the waste that is cut from the trimmed meat, costs \$7.99 per pound.

30. In those instances when Defendant discusses a per pound price with a consumer, he includes in his calculation the pounds of "free" meat that is given to the consumer in the form of the "bonus pack." In this manner, Defendant avoids disclosing to the consumer the fact that the trimmed meat costs \$7.99 per pound.

31. Defendant routinely rushes consumers through the sales transaction. Consumers describe the sales transaction as very hurried, high pressure, and confusing. Consumers' discussions with Defendant are routinely interrupted, and their questions about the purchasing or financing process routinely go unanswered. Defendant has instructed employees to load meat into a consumer's car prior to giving the consumer the opportunity to read and complete the sale documents.

32. Defendant requires consumers to sign several documents in the course of completing the sales transaction. Defendant does not provide consumers with time to read the documents that they are asked to sign nor does Defendant fully or accurately describe the documents to them prior to asking them to "sign this."

33. Despite Defendant's practice of disparaging the advertising hanging beef and encouraging the sale of the more expensive trimmed beef, one of the documents which Defendant requires a consumer to sign contains the following purported acknowledgment:

"I was shown (2) types of beef, trimmed and untrimmed. Both types were available and neither were [sic] disparaged or degraded. I was not encouraged or pressured to purchase either type of beef."

A copy of the document containing this purported acknowledgment is annexed hereto and incorporated by reference herein as Exhibit C.

34. Many consumers are unaware that they have entered into a contract to purchase beef at a price of \$7.99 per pound until after they leave The Meat Market.

35. In addition to failing to disclose the per pound price of the meat purchased by consumers, Defendant also fails to disclose the interest rate at which his sale contracts are financed.



36. Defendant encourages consumers to enter into finance contracts for the meat they purchase from Defendant. Defendant does not disclose to consumers the interest rate of the finance contract prior to presenting consumers with their sale documents. As a result of Defendant's practice of rushing consumers through the sale transaction, many consumers are unaware that they have entered into a finance contract at an interest rate of 24% until after they leave The Meat Market. In addition, despite Defendant's advertisements stating "no down payment with approved credit", Defendant has required some consumers who enter into finance contracts to make a down payment.

37. Despite Defendant's prominent advertisements for low priced beef in bulk quantities, Defendant maintains a very small inventory of the advertised low priced beef and a proportionally much larger inventory of the beef sold at \$7.99 per pound.

38. Defendant's conduct described herein is intentional.

COUNT ONE

(Bait and Switch)

39. Plaintiff repeats, realleges, and incorporates herein by reference paragraphs 1-38 of this Complaint.

40. Defendant's practice of attracting consumers to his place of business by advertising low priced beef which he subsequently disparages and unfavorably compares to much higher

priced trimmed meat in order to sell the higher priced meat constitutes bait and switch advertising, a pattern or practice of unfair and deceptive conduct in violation of 5 M.R.S.A. § 207.

41. Defendant's conduct as described herein is intentional.

COUNT TWO

(Misrepresentations)

42 Plaintiff repeats, realleges, and incorporates herein by reference paragraphs 1-41 of this Complaint.

43. Defendant's practice of misrepresenting and failing to disclose to consumers the cost and quantity of meat sold by him to consumers, as described in paragraphs 13-37 of this Complaint, constitutes a pattern or practice of unfair and deceptive conduct in violation of 5 M.R.S.A. § 207.

44. Defendant's unlawful conduct as described herein is intentional.

COUNT THREE

(Misrepresentations)

45. Plaintiff repeats, realleges, and incorporates herein by reference paragraphs 1-44 of this Complaint.

46. Defendant's practice of misrepresenting to consumers the availability of advertised "specials" as described in paragraphs 13-38 of this Complaint constitutes a pattern or

practice of unfair and deceptive conduct in violation of 5 M.R.S.A. § 207.

47. Defendants unlawful conduct as described herein is intentional.

COUNT FOUR

(Consumer Credit Code: Misrepresentations)

48. Plaintiff repeats, realleges, and incorporates herein by reference paragraphs 1-47 of this Complaint.

49. Defendant's practice of misrepresenting to prospective customers the cost, quality or quantity of meat sold by it, including (but not limited to) inducements described in paragraphs 13-38 of this Complaint, constitutes conduct in violation of and 9-A M.R.S.A. § 5-115.

50. Defendant's unlawful conduct as described herein is intentional.

COUNT FIVE

(Consumer Credit Code: Misrepresentations)

51. Plaintiff repeats, realleges, and incorporates herein by reference paragraphs 1-50 of this Complaint.

52. Defendant's practice of misrepresenting to prospective customers the cost, quality or quantity of meat sold by it, including (but not limited to) representations, impressions or promises described in paragraphs 13-38 of this Complaint, constitutes conduct in violation of 9-A M.R.S.A. § 5-117.

53. Defendant's unlawful conduct as described herein is intentional.

COUNT SIX

(Weights and Measures: Misrepresentations)

54. Plaintiff repeats, realleges, and incorporates herein by reference paragraphs 1-53 of this Complaint.

55. Defendant's conduct, including (but not limited to) that described in paragraphs 13-38 of this Complaint, constitutes offering, selling or exposing for sale less than a quantity represented, in violation of 10 M.R.S.A. § 2621.

56. Defendant's unlawful conduct as described herein is intentional.

COUNT SEVEN

(Weights and Measures: Misrepresentations)

57. Plaintiff repeats, realleges, and incorporates herein by reference paragraphs 1-56 of this Complaint.

58. Defendant's conduct, including (but not limited to) that described in paragraphs 13-38 of this Complaint, constitutes misrepresentation of a commodity sold, offered, exposed or advertised for sale in violation of 10 M.R.S.A. § 2622.

59. Defendant's unlawful conduct as described herein is intentional.

COUNT EIGHT

(Weights and Measures: Misrepresentations)

60. Plaintiff repeats, realleges, and incorporates herein by reference paragraphs 1-59 of this Complaint.

61. Defendant's conduct, including (but not limited to) that described in paragraphs 13-38 of this Complaint, constitutes representation of the price of a commodity sold, offered or advertised for sale by weight in a manner calculated or tending to mislead or deceive, all in violation of 10 M.R.S.A. § 2622.

62. Defendant's unlawful conduct as described herein is intentional.

COUNT NINE

(Weights and Measures: Failure to Provide Delivery Ticket)

63. Plaintiff repeats, realleges, and incorporates herein by reference paragraphs 1-62 of this Complaint.

64. Defendant's conduct, including (but not limited to) those representations, impressions or promises described in paragraphs 13-38 of this Complaint, constitutes bulk sales of commodities in excess of \$20 without accompaniment by a delivery ticket containing information regarding name and address of vendor and purchaser, date of delivery, quantity upon which price is based, identity of commodity (including representation of quality), and count of packages, all in violation of 10 M.R.S.A. § 2624.

65. Defendant's unlawful conduct as described herein is intentional.

RELIEF REQUESTED

Plaintiff requests entry of the following relief:

1. Declare that Defendant's conduct as described in this Complaint is in violation of The Unfair Trade Practices Act, The Consumer Credit Code, and The Weights and Measures Laws.

2. Permanently enjoin Defendant, his agents, employees, assigns, successors, or anyone acting under their control, from:

A. Advertising meat at a low price for the purpose of attracting customers and subsequently disparaging its quality in order to induce consumers to purchase higher priced meat;

B. Advertising meat for sale in specific quantities without insuring a supply sufficient to meet reasonably expected demand.

C. Advertising "specials", namely the availability of meat in specific quantities and/or at specific prices, and disclaiming the "special" as an example only.

D. Misrepresenting or failing to disclose to consumers the cost of meat sold to consumers by Defendant;

E. Misrepresenting the per pound or per week cost of meat purchased by consumers by including in his calculation the amount of "free" or "bonus pack" meat given to the consumer.

F. Failing to inform consumers that additional waste for which the consumer is required to pay will be cut from the beef described by Defendant as "trimmed meat".

G. Misrepresenting to consumers the amount or weight of fat and bone on hanging untrimmed meat.

H. Failing to provide consumers with adequate, uninterrupted time to read all documents which consumers are required to sign in order to consummate a sale;

I. Failing to provide consumers with a delivery ticket which complies with the requirements of 10 M.R.S.A. § 2624; and

J. Misrepresenting or failing to disclose to consumers the terms and conditions of credit transactions;

3. Order Defendant to provide an accounting of all meat sold by him in the State of Maine through The Meat Market and include in that accounting the names and addresses of each consumer who purchased meat and the amount paid to Defendant by each consumer;

4. Order Defendant to pay restitution to each consumer who purchased meat in reliance on Defendant's misrepresentations regarding availability, cost, quality or quantity;

5. Order Defendant to pay to the Department of Attorney General the costs of suit and investigation, including attorneys' fees;

6. Order Defendant to pay to the Department of Attorney General, pursuant to 5 M.R.S.A. § 209, civil penalties in an

amount not to exceed \$10,000 for each intentional violation of 5 M.R.S.A. § 207;

7. Order Defendant to pay to the Department of Attorney General, pursuant to 9-A M.R.S.A. § 6-113, a civil penalty of \$5,000 for willful and/or repeated violations of the Consumer Credit Code; and

8. Order such other and further relief as may be necessary to ameliorate the effects of Defendant's unfair and deceptive practices.

MICHAEL E. CARPENTER  
Attorney General

DATED: \_\_\_\_\_

\_\_\_\_\_  
AMY M. HOMANS

\_\_\_\_\_  
JAMES M. BOWIE  
Assistant Attorneys General  
State House Station #6  
Augusta, Maine 04333  
(207) 626-8800



STATE OF MAINE  
PENOBSCOT, SS.

SUPERIOR COURT  
CIVIL ACTION  
DOCKET NO. CV-93-

STATE OF MAINE, )  
 )  
 Plaintiff )  
 )  
 v. )  
 )  
 JOHN L. DAVIS, )  
 of Bangor, Maine d/b/a )  
 THE MEAT MARKET, )  
 an enterprise with a )  
 principal place of business )  
 in Bangor, Maine, )  
 )  
 Defendant )

TEMPORARY  
RESTRAINING ORDER

Upon review of the Motion by the State of Maine for a Temporary Restraining Order, together with the Verified Complaint, Affidavits and Memorandum of Law filed by the State in this matter, the Court finds that:

- (1) The conduct sought to be enjoined is in violation of statute, specifically 5 M.R.S.A. § 207, 9-A M.R.S.A. § 6-202, and 10 M.R.S.A. §§ 2621-22 and 2624;
- (2) Plaintiff has demonstrated a likelihood of success on the merits;
- (3) The public interest is not adversely affected by the granting of the Temporary Restraining Order; and
- (4) If the conduct complained of continues unimpeded, Maine consumers will suffer irreparable harm in that;

(a) Maine consumers will be led to pay to Defendant funds which are being obtained by the Defendant as a result of unfair and deceptive practices in violation of Maine law; and

(b) The likelihood that consumers will obtain restitution from Defendant is uncertain.

Accordingly, Defendant is hereby ORDERED restrained from

A. Advertising meat at a low price for the purpose of attracting customers and subsequently disparaging its quality in order to induce consumers to purchase higher priced meat;

B. Misrepresenting to consumers the availability of meat in advertised quantities;

C. Misrepresenting or failing to disclose to consumers the cost of meat sold to consumers by Defendant;

D. Failing to provide consumers with adequate, uninterrupted time to read all documents which consumers are required to sign in order to consummate a sale;

E. Failing to provide consumers with a delivery ticket which complies with the requirements of 10 M.R.S.A. § 2624; and

F. Misrepresenting or failing to disclose to consumers the terms and conditions of credit transactions;

G. Making any solicitations to Maine consumers without complying in all respects with the provisions of:

(1) The Unfair Trade Practices Act, 5 M.R.S.A. § 206  
et seq.;

(2) The Consumer Credit Code, 9-A M.R.S.A. § 6-202;  
and

(3) The Maine Weights and Measures Law, 10 M.R.S.A.  
§ 2301 et seq.

It is further ORDERED that because this Temporary  
Restraining Order is issued without notice to the Defendant,  
the hearing on Plaintiff's Motion for Preliminary Injunction  
shall take place at the Court's earliest convenience and shall  
take precedence over other matters except for older matters of  
the same character. Until such hearing is held, the provisions  
ordered herein shall remain in effect.

DATED:

April 8, 1993

Robert P. Stone  
JUSTICE, Superior Court