

STATE OF MAINE
KENNEBEC, SS.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO.

STATE OF MAINE,)	
)	
Plaintiff)	
)	
v.)	
)	COMPLAINT
)	(INJUNCTIVE RELIEF REQUESTED)
TIM FOX, d/b/a FOX SCHOOL)	
OF PHOTOGRAPHY, of the City)	
of Portland, County of)	
Cumberland, State of Maine,)	
)	
Defendant)	

INTRODUCTION

1. This is an action brought pursuant to the Unfair Trade Practices Act, 5 M.R.S.A. §§ 206-214 (1979 & Supp. 1985) and the laws regulating private business, trade, and technical schools, 20-A M.R.S.A. §§ 9501-9507 (Supp. 1985), to enjoin Defendant Tim Fox, d/b/a Fox School of Photography, from operating, maintaining, or advertising any proprietary school, until such time as Defendant is licensed to operate such a school by the Department of Educational and Cultural Services. This Complaint also requests the Court to enjoin Defendant from making misrepresentations in connection with the operation of a proprietary school and requests restitution on behalf of students who enrolled in the school for the 1985-1986 school year. Finally, the Complaint requests that Defendant pay a

civil penalty of \$5,000 for operating a proprietary school in violation of 20-A M.R.S.A. § 9507 (Supp. 1985).

PARTIES

2. Plaintiff, State of Maine, is a sovereign state and brings this action by and through the Attorney General pursuant to his enforcement responsibilities under 5 M.R.S.A. § 209 (Supp. 1985), 20-A M.R.S.A. § 9503 (Supp. 1985), and the powers vested in him by common law.

3. Defendant Tim Fox, d/b/a Fox School of Photography ("Defendant") owned and operated a vocational photography school at 137 Somerset Street, in Portland, Maine.

JURISDICTION AND VENUE

4. This Court has jurisdiction over this matter pursuant to 5 M.R.S.A. § 209 (Supp. 1985) and 20-A M.R.S.A. § 9503 (Supp. 1985).

5. Venue is properly laid in Kennebec County pursuant to 5 M.R.S.A. § 209 (Supp. 1985).

STATUTORY BACKGROUND

6. Under the Unfair Trade Practices Act, 5 M.R.S.A. §§ 206-214 (1979 & Supp.1985), courts are to "be guided by interpretations given by the Federal Trade Commission" in determining what constitutes an unfair or deceptive act or practice within the meaning of 5 M.R.S.A. § 207 (1979). Pursuant to the Federal Trade Commission rule on Proprietary Vocational & Home Study Schools, 16 C.F.R. Part 438, it is an unfair or deceptive act or practice for any proprietary school

to fail to provide the student with an enrollment contract, which discloses both the student's cancellation rights and the school's graduation and placement rates.

7. Pursuant to the chapter on Private Business, Trade & Technical Schools, 20-A M.R.S.A. §§ 9501-9507 (Supp. 1985), all proprietary schools in this State must be licensed and bonded in the amount of \$10,000 prior to operating or maintaining any proprietary school; collecting any tuition, fee, or other charge for operating or maintaining the school; or soliciting students for enrollment in the school.

FACTUAL BACKGROUND

8. From January, 1985, to the date of this Complaint, Defendant has not been licensed to operate a proprietary school in the State of Maine. By letter dated June 17, 1985, the Department of Educational and Cultural Services notified Defendant that he was prohibited from operating a proprietary school in Maine until such time as he became licensed to operate such a school by the Department of Educational and Cultural Services.

9. From approximately June, 1985, to September, 1985, Defendant solicited students for enrollment in a vocational photography school, the Fox School of Photography, located at 137 Kennebec Street in Portland, Maine.

10. In soliciting students for the 1985-1986 school year, Defendant distributed promotional material which made several

representations, including, but not limited to, the following:

a. Defendant represented that his school had a faculty and staff of five persons (including a director, associate director, darkroom supervisor, lab technician or exhibit curator);

b. Defendant represented that the Department of Educational and Cultural Services had granted certification to Fox School of Photography for the purpose of teaching a program of photographic studies in the State of Maine; and

c. Defendant represented that Fox School of Photography was registered with the Commissioner of Educational and Cultural Services as a licensed post-secondary vocational school.

11. At the time of Defendant's solicitations of students for enrollment in the 1985-86 school year, the Fox School of Photography had two employees.

12. At the time of Defendant's solicitation of students for enrollment in the 1986-86 school year, the Fox School of Photography was not certified by the Department of Educational and Cultural Services.

13. At the time of Defendant's solicitations of students for enrollment in the 1985-86 school year, the Fox School of Photography was not registered or licensed as a post secondary vocational school by the Department of Educational and Cultural Services.

14. At the time the students paid their deposits, tuition fee or other fees to Defendant, Defendant failed to provide the students with a letter, enrollment contract or any other document setting forth the school's policy on cancellation rights or information on graduation and placement rates, as required by the FTC rule, 16 C.F.R. Part 438.

15. On or about September 9, 1985, classes commenced at the Fox School of Photography. At that time, the physical plant of the school was not completed and the facilities were inadequate for the clinical instruction of photography and film processing.

16. On or about September 23, 1985, classes at the Fox School of Photography terminated, when Defendant was evicted from the school premises for non-payment of rent.

17. Defendant has not refunded the tuition paid by the students for the 1985-1986 school year.

COUNT I

(Unfair Trade Practices)

18. Plaintiff repeats, realleges, and incorporates herein paragraphs 1 through 17 of this Complaint.

19. Defendant engaged in unfair or deceptive acts or practices, in violation of 5 M.R.S.A. § 207 (1979), as follows:

a. By misrepresenting the credentials and services available at the Fox School of Photography;

b. By failing to provide an enrollment contract, with a disclosure of cancellation rights and the school's placement and graduation rates, as required by the Federal Trade Commission Regulation, 16 C.F.R. Part 438; and

c. By failing to operate a vocational photography school after accepting tuition payments from students for the 1985-1986 school year.

COUNT II

(Operating a Proprietary School Without a License)

20. Plaintiff repeats, realleges, and incorporates herein paragraphs 1 through 17 of this Complaint.

21. Defendant, by operating, maintaining and soliciting students for his vocational photography school without being licensed and bonded as a proprietary school by the Department of Educational and Cultural Services, violated the statutes regulating private business, trade and technical schools, 20-A M.R.S.A. §§ 9501-9507 (Supp. 1985).

RELIEF REQUESTED

WHEREFORE, Plaintiff, State of Maine, respectfully requests that this Court grant relief as follows:

1. Preliminarily and permanently enjoin Defendant from:
 - a. Operating or maintaining a proprietary school without first obtaining a license from the Department of Educational and Cultural Services;

b. Soliciting prospective students for Defendant's vocational photography school, until such time as the school is licensed by the Department of Educational and Cultural Services;

c. Operating a proprietary school without complying with the disclosures required by the Federal Trade Commission, 16 C.F.R. Part 438; and

d. Making any misrepresentation in connection with the operation of a vocational photography school.

2. Order Defendant to pay restitution to the students enrolled in the Fox School of Photography for the 1985-1986 school year.

3. Order Defendant to pay the State a \$5,000 civil penalty pursuant to 20-A M.R.S.A. § 9503 (Supp. 1985), for operating and maintaining a proprietary school or representing himself as operating or maintaining a proprietary school, in violation of 20-A M.R.S.A. §§ 9501-9507 (Supp. 1985).

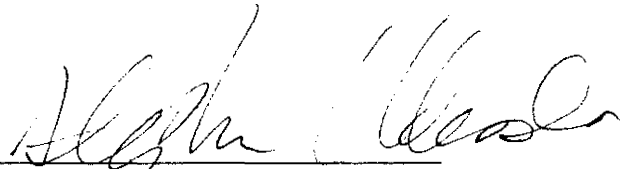
4. Order Defendant to pay the Department of the Attorney General for the cost of this suit and its investigation;

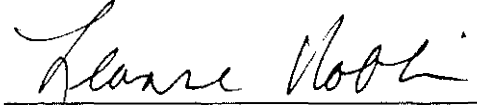
5. Order such other relief as this Court deems just and equitable.

DATED: April 8, 1986

Respectfully submitted,

JAMES E. TIERNEY
Attorney General


STEPHEN L. WESSLER
Senior Assistant Attorney General


LEANNE ROBBIN
Assistant Attorney General
Consumer & Antitrust Division
State House Station 6
Augusta, Maine 04333
(207) 289-3661