

STATE OF MAINE
KENNEBEC, ss.

SUPERIOR COURT
Civil Action
Docket No. CV-82-83

STATE OF MAINE,)
)
 Plaintiff)
)
 vs.)
)
 LABELLE PROVINCE, INC.,)
)
 Defendant)
)
 _____)

STIPULATED DOCKET ENTRY AND
FINAL JUDGMENT

The parties agree that the following docket entry may be made, pursuant to 5 M.R.S.A. §209, for a Final Judgment in the State's Motion for Civil Penalties for Violations of the Terms of an Injunction issued by this Court in the above captioned matters pursuant to the Maine Unfair Trade Practices Act, 5 M.R.S.A. §206 et seq.

1. Plaintiff State of Maine filed its Motion for Civil Penalties, pursuant to 5 M.R.S.A. §209, alleging that the Defendant had violated at least the five following paragraphs of the nineteen paragraphs contained in the Court ordered Consent Decree:

- A) "(U)sing unfair and deceptive sales tactics in dealing with its phone or mail order customers or its customers who personally visit the store."
(Paragraph 4(I) of the Consent Decree)

- B) "(D)isparaging its advertised merchandise in order to 'switch' consumers to other, more expensive products." (Paragraph 4(L) of the Consent Decree)
- C) "(R)efusing to allow customers to purchase merchandise advertised at an attractively low price." (Paragraph 4(J) of the Consent Decree)
- D) "(S)elling deteriorating or used goods without informing the consumer that they were not new goods that satisfied the warranty of merchantability." (Paragraph 4(N) of the Consent Decree)
- E) "(U)sing advertisements or point of purchase announcements that contain unfair or deceptive claims or promises." (Paragraph 4(A) of the Consent Decree)

2. The Defendant admits that in at least one instance each of the above listed paragraphs has been violated since the Court ordered Consent Decree, dated March 4, 1982. However, with respect to Paragraph D above, Defendant asserts that it informed consumers about used goods but admits that its failure to place a sign on display cases containing demonstration or used models may result in consumers being misled.

3. Plaintiff and Defendant, through their respective counsel, have approved the terms of this Stipulation for docket entry and judgment and acknowledge that they have waived their rights to a hearing on the merits.

4. Finding that it has jurisdiction in this matter, the Court

hereby ORDERS that the Defendant shall pay the State for its violations of the Consent Decree the following civil penalty: \$16,500. This civil penalty is ordered pursuant to 5 M.R.S.A. §209 and shall be applied by the Department of Attorney General in the carrying out of the Maine Unfair Trade Practices Act (5 M.R.S.A. §206 et seq.). The Defendant shall pay the civil penalty within 15 days of the signing of this Stipulated Judgment.

5. The Court retains jurisdiction of the subject matter of this action and its parties for the purpose of applying to this Court at any time for further orders or directions which might be appropriate.

DATED at Augusta, Maine, this day of , 1982.

JUSTICE, SUPERIOR COURT

SEEN AND AGREED TO:

James A. McKenna III
JAMES A. McKENNA, III
Assistant Attorney General
State House Station 6
Augusta, Maine 04333
(207)289-3717

[Signature]
ATTORNEY FOR DEFENDANT

Handwritten notes:
Signed
by
A. C. C. C.
on 8/26/82
5, 1982

STATE OF MAINE
KENNEBEC, SS.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. C ✓ 82 - 83

STATE OF MAINE,
Plaintiff
v.
LABELLE PROVINCE, INC.,
Defendant

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CONSENT DECREE

1. Plaintiff, State of Maine, has filed its Complaint against Labelle Province, Inc. alleging violations of 5 M.P.S.A. § 206 et seq., the Maine Unfair Trade Practices Act, 10 M.R.S.A. § 1211 et seq., the Maine Uniform Deceptive Trade Practices Act, and 10 M.R.S.A § 1201 et seq., the Maine Unfair Sales Act.

2. The State in its Complaint alleges that the Defendant has:

- A. Published many and widespread advertisements replete with unfair deceptive claims and promises;
- B. Consistently employed unfair sales tactics in its dealings with its phone order or mail order customers or its customers who personally visited the store;
- C. Advertised and sold merchandise of general use and consumption such as cameras at less than its cost in order to injure competitors.

3. The Plaintiff and Defendant, through their respective attorneys, mutually have approved the terms of this Decree and waive their rights to a hearing.

4. THEREFORE, this Court finding that the Complaint states a cause of action and that it has jurisdiction in this matter, hereby orders the Defendant, its agents, employees, and assigns, persons acting in concert with it such as independent contractors and other persons acting under its control to refrain from doing any of the following acts.

FALSE, MISLEADING, AND DECEPTIVE ADVERTISING

A. Using advertisements or point of purchase announcements that contain unfair or deceptive claims or promises;

B. Using advertisements that deceptively represent that a camera lens or flash being offered for sale with a specific camera is a lens or flash manufactured by the maker of that camera when in fact it is a lens or flash manufactured by another concern;

C. Using advertisements that state merchandise is generally available when in fact the Defendant does not have sufficient supply to meet reasonably expected demand;

D. Using advertisements that state "sale" prices as being a reduction from their regular selling price unless the Defendant has recently sold that merchandise at the claimed regular selling price;

E. Using advertisements that state the price of an item has been reduced by a percentage amount, unless the Defendant

has recently sold that item at 100% of the price being offered;

F. Using advertisements that state a mail order policy of 24 hour processing of call mail orders, unless orders are in fact processed within that time;

G. Using advertisements that state a refund policy unless the Defendant honors that refund policy; and

H. Using advertisements that depict by photograph the product, unless the Defendant is willing to sell that product to a consumer-purchaser.

UNFAIR OR DECEPTIVE SALE PRACTICES

I. Using unfair or deceptive sales tactics in its dealings with its phone or mail order customers or its customers who personally visit its store;

J. Refusing to allow consumers to purchase merchandise advertised at an attractively low price;

K. Claiming to inquiring customers that advertised items are not available and offering to sell instead a higher priced item;

L. Disparaging its advertised merchandise in order to "switch" consumers to other, more expensive products;

M. Selling deteriorating or used goods without informing the consumer that they were not new goods that satisfied the warranty of merchantability;

N. Making deceptive statements to consumers concerning the make and quality of the merchandise it sells;

O. Selling merchandise to consumers without revealing hidden charges such as "handling" and "shipping" charges and "restocking" fees;

P. Setting forth unfair or illegal conditions in its sales receipts, such as refusing under any circumstances to refund the consumers' money or holding itself not responsible for the mail order goods that arrive damaged;

Q. Delaying complying with the mail or phone order and then offering expedited service for a higher priced item; and

R. Violating the Federal Trade Commission Rule by failing to make timely delivery of merchandise ordered by consumers (16 Code of Federal Register § 435).

SALES BELOW COST

S. Advertising and selling merchandise of general use and consumption such as cameras at less than its cost in order to injure competitors.

5. The Defendant will provide current and future employees a copy of this Consent Decree and personally discuss with them the obligations under this Decree and the legal ramifications of failure to adhere to them.

6. The Defendant will pay the cost of this investigation of Defendants and the cost of suit in amount of \$600.00.

7. The Court retains jurisdiction of the subject matter of this action and its parties for the purpose of applying to this Court at any time for further orders or directions which

may be appropriate.

DATED at Augusta, Maine, this
1982.

4th day of March

William E. McQuay
JUSTICE, SUPERIOR COURT

Seen and agreed to by:

James A. McKenna III

JAMES A. MCKENNA III, Esq.

Assistant Attorney General

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9344921

REC'D AND FILED

MAR 5 - 1982

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