

STATE OF MAINE
KENNEBEC, SS.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. CV-_____

STATE OF MAINE,)
)
Plaintiff)
)
v.)
)
LAVERDIERE'S ENTERPRISES,)
a Maine corporation with)
offices in Waterville,)
Kennebec County, Maine, and)
REGINALD LAVERDIERE, of)
Waterville, Kennebec County,)
Maine, individually and as an)
Officer, Director and)
Stockholder of the)
Forementioned Corporation,)
)
Defendants)

COMPLAINT FOR INJUNCTIVE
RELIEF AND RESTITUTION

INTRODUCTION

1. This is an action under the Unfair Trade Practices Act, 5 M.R.S.A. § 206 et seq (Supp. 1982), to enjoin the Defendants from the use of deceptive practices in the sale of photo finishing and developing services and to obtain restitution for consumers who lost monies as a result of these practices.

JURISDICTION AND VENUE

2. This Court has jurisdiction of this matter pursuant to the Maine Unfair Trade Practices Act, 5 M.R.S.A. § 209.

3. Venue is laid in Kennebec County, pursuant to 5 M.R.S.A. § 209.

PARTIES

4. Plaintiff STATE OF MAINE is a sovereign state and brings this action by and through its Attorney General, pursuant to powers vested in him by the common law and 5 M.R.S.A. § 194 (1979), as the State's chief law enforcement officer, and also pursuant to 5 M.R.S.A. § 206 et seq (Supp. 1982), the Maine Unfair Trade Practices Act, to protect the public by preventing and restraining the Defendants from practicing unfair and deceptive trade practices.

5. Defendant LAVERDIERE'S ENTERPRISES is a corporation organized and existing under the laws of the State of Maine. The address of the registered corporate office is 44 Elm Street, Waterville, Maine, 04901. Defendant operates a chain of drug stores including stores within the State of Maine.

6. Defendant REGINALD LAVERDIERE as president, director, and stockholder personally directs and controls the business activities and practices of Laverdiere's Enterprises. Defendant Laverdiere's address is Box 1014, Waterville, Maine 04901.

NATURE OF TRADE AND COMMERCE

7. The Defendants operate a chain of retail stores which do business under the name of Laverdiere Super Drug Stores. These stores offer a wide variety of consumer products and services, including photo finishing.

8. The Defendants advertise photo finishing through newspaper and television advertisements and through signs placed in their stores.

9. Defendants do not provide their customers with bills for photo finishing until customers return to the store to pick up their processed film.

10. In addition to their photo finishing service, the Defendants on or about May 9, 1983, and continuing to on or about June 1, 1983, made an introductory offer for "designerprints" service on 35mm film at no additional charge. In "designerprints" service, the film is printed with a glossy finish and is inspected by the developer prior to delivery.

11. On or about June 7, 1983, the Defendants prepared and distributed a memorandum to all personnel in their photo departments instructing the personnel to provide "designerprints" service on all 35mm film at an additional charge of 5¢ per print. The Defendants, in their memorandum, specifically instructed sales personnel to ask customers whether they wanted "designerprints" service.

12. The Defendants' cost for developing film with "designerprints" service is 3¢ per print.

FACTS

13. During the summer of 1983, the Defendants advertised in daily newspapers a half price sale for photo finishing. The Defendants' advertisements listed prices approximately one-half less than the prices for regular photo finishing and did not list prices for or refer to "designerprints" service.

14. During the summer of 1983, the exact dates being unknown to Plaintiff, the Defendants displayed signs in Laverdiere's Super Drug Stores advertising photo finishing. The signs listed prices for regular photo finishing in large prominent type. The signs also contained a statement, printed in smaller type, stating that all 35 mm prints would be given "designerprints" service at a charge of 5¢ extra per print.

15. Customers who view the sign described in the preceding paragraph generally would not notice the statement concerning "designerprints" because the size of the type used in the notice was too small.

16. On or about July 22, 1983, the Defendants prepared and distributed a memorandum to their sales personnel (superceding the memorandum of June 7, 1983 described in paragraph 11 above) instructing them to provide all customers seeking 35 mm photo

finishing with "designerprints" service. The Defendants, in their memorandum, specifically instructed sales personnel not to ask customers whether they wanted "designer print" service. (A copy of the memorandum is attached to this Complaint as Exhibit A).

17. From on or about July 22, 1983, to on or about September 8, 1983, the Defendants' sales personnel acted in accordance with the July 22nd memorandum. The Defendants' sales personnel, in ordering "designerprints" service for customers responding to the advertisements and signs described in paragraphs 11 and 12 above, neither asked their customers whether they wanted the service nor whether they were willing to pay the 5¢ per print added charge.

18. Those customers who were charged for "designerprints" service without their knowledge or request have suffered a financial loss due to Defendants' conduct.

CAUSE OF ACTION

19. Plaintiff realleges and incorporates by reference herein paragraphs 7 through 16.

20. Defendants have misrepresented the price of photo finishing for 35 mm film and charged customers "designerprints" service without their knowledge or request.

21. Defendants' conduct as described above constitutes an unfair and deceptive practice in violation of 5 M.R.S.A. § 207.

22. Defendants' illegal conduct will continue unless enjoined by the Court.

RELIEF REQUESTED

WHEREFORE Plaintiff respectfully requests that this Court:

1. Find that the Defendant is engaging in unfair and deceptive trade practices in violation of 5 M.R.S.A. § 207 (Supp. 1983).

2. Issue a Preliminary and Permanent Injunction pursuant to 5 M.R.S.A. § 209 enjoining the Defendants, their agents, employees, assigns or other persons acting for the Defendants or under their control from:

- A. Misrepresenting in their advertisements, printed materials, and point of purchase displays the actual price for photo finishing service;
- B. Failing to reveal to their customers all charges for photo finishing service.
- C. Failing to request from their customers specific acceptance of any optional charges for photo finishing.

3. Order restitution for the Defendants' customers who lost monies as a result of the unfair and deceptive trade practices of the Defendants.


4. Order the Defendants to pay the cost of this suit and of the investigation of the Defendants made by the Attorney General.


5. Grant such other relief as the Court deems just and proper.

Dated: November 9, 1983

Respectfully submitted,

JAMES E. TIERNEY
Attorney General


STEPHEN L. WESSLER
Assistant Attorney General


JAMES A. MCKENNA
Assistant Attorney General

Attorneys for Plaintiff
Consumer & Antitrust Division
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Augusta, Maine 04333
289-3717

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Defendants)

CONSENT DECREE

Plaintiff, STATE OF MAINE, having filed this Complaint on November 9, 1983, and Plaintiff and Defendants having consented to the entry of this Consent Decree without trial or adjudication of any issue of fact or law herein and without this Decree constituting any evidence against, or an admission by, any party with respect to such issue (except as to Part I); now, therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby Ordered and Decreed as follows:

I. JURISDICTION

1. This Court has jurisdiction of the subject matter of this action. This Complaint states a claim upon which relief may be granted against Defendants under 5 M.R.S.A. §§ 206-214 (1979 & Supp. 1983).

II. RELIEF

A. Permanent Injunction. Defendants, their agents, employees, assigns or other persons acting for the Defendants or under their control are permanently enjoined from:

1. Engaging in a practice of misrepresenting in any manner, including advertisements, printed materials, and point of purchase displays, the actual price of any good or service, including photo finishing or photo developing;

2. Engaging in a practice of failing to disclose to customers prior to sale all charges for any good or service, including photo finishing or photo developing; and

3. Engaging in a practice of accepting orders from customers for any good or service, including photo developing or photo finishing, without obtaining from such customers their approval prior to sale of any charges for additional, extra, or optional services or goods.

4. Paragraphs 1 through 3 above shall not apply to isolated actions of individuals, other than managers, officers

or any persons in a corporate supervisory or management position, acting against corporate policies and procedures.

B. Restitution. Defendant LaVerdiere's Enterprises shall provide restitution on terms described below to customers who purchased Designerprint photo developing service from Defendants during the period July 22, 1983 to September 8, 1983:

1. Any person who submits to Defendant LaVerdiere's Enterprises a written statement within 45 days of the date of this Consent Decree stating that the person purchased Designerprint service from Defendant LaVerdiere's Enterprises during the period July 22, 1983 to September 8, 1983, shall be entitled to restitution.

2. The written statement from each customer shall set forth the number of prints which were purchased.

3. Defendant LaVerdiere's Enterprises shall provide customers complying with the above requirements with restitution within 15 days of receipt of the written statement.

4. The amount of restitution shall be computed by multiplying the number of prints received by the customer by five cents.

5. Defendant LaVerdiere's Enterprises shall post in a conspicuous place each in each photo developing department in each LaVerdiere's Enterprises store in the state of Maine a copy of the circular attached hereto as Exhibit A. Defendant

LaVerdiere's Enterprises shall post said circular for a period beginning on the date this Consent Decree is signed and ending 45 days thereafter.



C. Investigative Costs. Prior to the filing of this Consent Decree Defendant LaVerdiere's Enterprises shall pay to the Department of the Attorney General, for the costs of this investigation, the amount of \$1,500.

III. RETENTION OF JURISDICTION

Jurisdiction is retained by the Court for the purpose of enabling any of the parties of this Consent Decree to apply to this Court at any time for such further orders or directions as may be necessary or appropriate for the construction or carrying out of the Consent Decree, for the modification of or termination of any of the provisions hereof, for the enforcement of compliance herewith and for the punishment of violations thereof.

Consented to on behalf of the State of Maine by James E. Tierney, Attorney General.

DATED: July 24 1989

 
STEPHEN L. WESSLER
Assistant Attorney General
Chief, Consumer & Antitrust Division
State House Station 6
Augusta, Maine 04333
(207) 289-3661

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PEARL VALERIE PAGE

JUL 26 1989

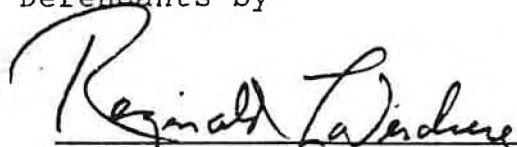
CLERK OF COURTS
KENNEBEC COUNTY

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JUL 15 1984


Consented to on behalf of Defendants by

DATED:


REGINALD LAVERDIERE,
individually and as an officer,
director and stockholder of
LaVerdiere's Enterprises.


CLERK OF COURTS
KENNEBEC COUNTY

DATED:


SUMNER LIPMAN, ESQ.
Lipman & Parks
72 Winthrop Street
Augusta, Maine 04330
(207) 622-3711
Attorney for Defendants

So Ordered and Decreed.

DATED: 7/26/84


Justice, Maine Superior Court

NOTICE: REFUND

EXHIBIT A

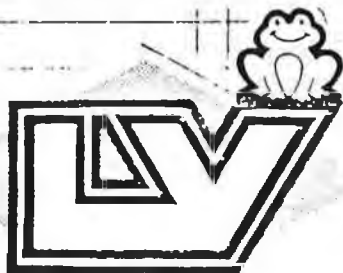
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CLERK OF COURT
KENN BEC COUN

Anyone who purchased Designerprints between July 22, 1983 and September 8, 1983 can receive a 5¢ refund per print by providing a written statement indicating the date of purchase and the number of prints.



LaVERDIERE'S
SUPER DRUG STORES