

STATE OF MAINE
KENNEBEC, ss.

SUPERIOR COURT
CIVIL ACTION
Docket No. CV-05-297

STATE OF MAINE,)	
)	
Plaintiff,)	
)	
v.)	
)	
THE MANDATORY POSTER)	
AGENCY, INC., d/b/a THE MAINE)	
LABOR LAW POSTER SERVICE and)	AMENDED COMPLAINT
THE MAINE FOOD SERVICE)	(Injunctive Relief Requested)
COMPLIANCE CENTER,)	
)	
and)	
)	
THOMAS FATA, STEVEN J. FATA,)	
AND JOE FATA,)	
)	
Defendants)	

INTRODUCTION

1. The Attorney General brings this action in the name of the State of Maine pursuant to the Maine Unfair Trade Practices Act (“UTPA”), 5 M.R.S.A. Sections 205-A to 214, and 13-C M.R.S.A. § 1502(4).

PARTIES

2. Plaintiff State of Maine (the “State”) is a sovereign state.
3. Defendant The Mandatory Poster Agency, Inc. (“MPA”), d/b/a as The Maine Labor Law Poster Service and the Maine Food Service Compliance Center, is a closely-held Michigan corporation with a principal business office

at 6323 West Saginaw, Suite E, Lansing, Michigan 48917.

4. Defendant Thomas Fata is, and was at all times relevant hereto, the President of MPA. His address is 4335 Appletree Lane, Lansing, Michigan 48917.

5. Defendant Steven J. Fata is, and was at all times relevant hereto, the Vice President of MPA. His address is 2511 Sugartree Trail, Lansing, Michigan 48917.

6. Defendant Joe Fata is, and was at all times relevant hereto, the Treasurer of MPA. His address is 4337 Blackberry Lane, Lansing, Michigan 48917.

7. The individual Defendants are brothers and are the sole directors, shareholders, and officers of MPA. They formulate, direct and control MPA's business practices, and are its alter egos.

8. Defendants solicit the sale of workplace posters by direct mail sent throughout the United States, using different assumed names (e.g. "The North Dakota Labor Law Poster Service," and "The Connecticut Labor Law Poster Service," or the "Michigan Food Service Compliance Center," and the "Illinois Food Service Compliance Center") and addresses in each state.

JURISDICTION AND VENUE

9. This Court has jurisdiction over this action pursuant to 4 M.R.S.A. Section 105 and 5 M.R.S.A. § 209, and jurisdiction over Defendants pursuant to 14 M.R.S.A. § 704-A.

10. Venue is properly laid in this county pursuant to 5 M.R.S.A. § 209.

STATUTORY BACKGROUND

11. Pursuant to 5 M.R.S.A. § 207, “unfair or deceptive acts or practices in the conduct of any trade or commerce are . . . unlawful.”

12. Pursuant to 5 M.R.S.A. § 209:

Whenever the Attorney General has reason to believe that any person is using or is about to use any method, act or practice declared by section 207 to be unlawful, and that proceedings would be in the public interest, he may bring an action in the name of the State against such person to restrain by temporary or permanent injunction the use of such method, act or practice and the court may make such orders or judgments as may be necessary to restore to any person who has suffered any ascertainable loss by reason of the use or employment of such unlawful method, act or practice, any moneys or property, real or personal, which may have been acquired by means of such method, act or practice. . . .

13. Pursuant to 5 M.R.S.A. § 209, each violation of 5 M.R.S.A. § 207 that results from intentional and unfair or deceptive conduct is a civil violation for which a civil penalty of up to \$10,000 may be adjudged.

14. Pursuant to 13-C M.R.S.A. § 102(13), a “foreign corporation” means “a corporation incorporated for profit under a law other than the law of this State that would be a business corporation if incorporated under the laws of this State.”

15. Pursuant to 13-C M.R.S.A. § 1501(1), “[a] foreign corporation may not transact business in this State until the foreign corporation files an application for authority to transact business with the Secretary of State.”

16. Pursuant to 13-C M.R.S.A. § 1502(4), “[a] foreign corporation is liable for a civil penalty of \$500 for each year, or portion thereof, it transacts business in this State without authority. The Attorney General may collect all penalties due under this subsection.”

17. Pursuant to 14 M.R.S.A. § 1522(1)(A), the Court shall allow litigation costs, including court costs, reasonable attorney’s fees and reasonable expert witness fees, should the State prevail in an action brought by the Attorney General to enforce 5 M.R.S.A. § 209.

FACTS

18. Beginning in 2000 or 2001 and continuing to the present, Defendants, d/b/a The Maine Labor Law Poster Service, have offered for sale, sold and distributed, largely through direct mail solicitations, “mandatory posters,” or posters that employers are required by state and/or federal law to post in their workplaces, to persons in Maine.

19. MPA, a foreign corporation, has never filed an application with the Secretary of State for authority to conduct business in the State of Maine as required by 13-C M.R.S.A. § 1501(1).

20. Defendants’ address on their solicitation materials and mailing envelopes for The Maine Labor Law Poster Service is 126 Western Avenue #338, Augusta, Maine 04330-7252, which is the address to a personal mailbox. Defendants do not maintain an office for The Maine Labor Law Poster Service in the City of Augusta nor do they have an office anywhere else in the State of

Maine.

21. Defendants use certain language, terms, typeface, and symbols in the context of their solicitation materials and on their mailing envelopes to create the misimpression or misperception that The Maine Labor Law Poster Service is a government agency, or that it has a contract with a government agency to provide mandatory workplace posters, and that purchase of Defendants' product or products is required in order to comply with state and/or federal law. Examples of such language, terms, typeface, and symbols include, but are not limited to, the following:

- a) Using the symbol of an eagle in The Maine Labor Law Poster Service's logo;
- b) Referring to or emphasizing the possible criminal or civil penalties that may be imposed on persons who fail to comply with current labor poster laws;
- c) Referring to investigations that may be conducted by state inspectors;
- d) Using "Notice Numbers" or similar identifiers;
- e) Using language regarding "compliance" with state and/or federal laws;
- f) Using the State's name in conjunction with "labor law" and "service" in its assumed name;
- g) Failing to clearly and conspicuously state that The Maine

Labor Law Poster Service is not a government agency, and that it does not contract with a government agency to provide mandatory workplace posters.

- h) Failing to clearly and conspicuously state that all required notices may be obtained free of charge from the issuing government agencies.

22. Defendants inaccurately or incompletely cite to the legal requirements or the statutory texts of certain labor law postings in their solicitation materials, including, but not limited to, a cite to the posting requirements contained in 26 M.R.S.A. § 701, which was repealed in 2001.

23. Based on information and belief, sometime during the summer of 2006, Defendants, d/b/a the Maine Food Service Compliance Center, began offering for sale, selling and distributing, largely by direct mail, "2006 Approved Hand Washing Posters" to owners of Maine food service establishments. A copy of a solicitation is attached hereto as Exhibit 1.

24. The address on the solicitations for the Maine Food Service Compliance Center is "126 Western Avenue #338, Augusta, Maine 04330-7252," which is the address to the same personal mailbox used by Defendants for their labor law poster solicitations. Defendants do not maintain an office for the Maine Food Service Compliance Center in the City of Augusta nor do they have an office anywhere else in the State of Maine.

25. Defendants use certain language, terms, typeface, and symbols in

the context of their solicitation materials and on their mailing envelopes to create the misimpression or misperception that the Maine Food Service Compliance Center is a government agency, or that it has a contract with a government agency, to provide “approved” handwashing posters, and that purchase of Defendants’ product is required in order to comply with state and federal law. Examples of such language, terms, typeface, and symbols include, but are not limited to, the following:

- a) Using the symbol of an eagle in the logo;
- b) Referring to and emphasizing the imposition of fines or imprisonment or both for violating requirements for hand washing posters that Defendants claim to be in the “State and Federal Food Code;”
- c) Referring to investigations that “will be conducted by your local inspectors;”
- d) Using “Business ID” numbers;
- e) Using language regarding “compliance” with state and federal requirements;
- f) Using the word “compliance” in the assumed name; and
- g) Failing to clearly and conspicuously state that the Maine Food Service Compliance Center is not a government agency, and that it does not contract with a government agency to provide approved hand washing posters.

26. A number of statements in Defendants' solicitations for handwashing posters are misrepresentations and are therefore deceptive, including the following:

- a) "State and Federal food codes have recently been amended to include a new hand washing posting requirement."

In truth and in fact, the United States Food and Drug Administration's *Food Code* ("*Federal Code*"), last revised in 2005, is a model code, and does not have the force of law. Further, the provision for "handwashing signage" in the *Maine Food Code* ("*Maine Code*")¹ is not new, and has not been amended since the *Maine Code* was adopted in 2001.

- b) (i) "Effective immediately all Food Service Establishments will be required to post at all hand washing facilities a poster reminding FOOD SERVICE EMPLOYEES to regularly wash their hands. This requirement applies to all hand washing sinks and all public and private lavatories."
 - (ii) "Posters must also meet the exact specifications and procedures presented in section 2-301.12 of the code and should not be self-made."

In truth and in fact, again, as set forth above, these provisions in the *Federal Code* are not requirements of federal law. Contrary to Defendants'

¹ Section 6-301.14 of the *Maine Code* on "Handwashing Signage" provides: "A sign or poster that notifies FOOD EMPLOYEES to wash their hands shall be provided at all handwashing lavatories used by FOOD EMPLOYEES and shall be clearly visible to FOOD EMPLOYEES."

claims, the specifications for how to wash² and when to wash³ are not required by the *Maine Code* to be included on handwashing posters. The only requirements in the *Maine Code* regarding handwashing signage are set forth in section 6-301.14: 1) a sign or poster notifying food employees to wash their hands shall be provided only at those handwashing lavatories used by food employees; and 2) the sign or poster must be clearly visible to all food employees. Further, there is no prohibition against the use of “self-made” handwashing posters.

c) “Investigations will be conducted by your local inspectors.”

In truth and in fact, only four municipalities in Maine have authority to enforce compliance with the *Maine Code*. In all other locations, inspections are done by State inspectors.

d) Defendants attribute section 8-811.10 to the “State and Federal Food Code” and cite subsection B as authority for fines and sentences that may be imposed for violations: “A person who violates a provision of this code shall be guilty of a misdemeanor, punishable by: (1) a **fine** of not more than [sic] **2500** dollars, or by **imprisonment** not exceeding one year, or **both** the fine and

² “Cleaning Procedure,” which is set forth in Section 2-301.12 of the *Maine Code*, provides in subsection (A): “. . . FOOD EMPLOYEES shall clean their hands and exposed portions of their arms with a cleaning compound in a lavatory that is equipped as specified under ¶ 5-202.12 by vigorously rubbing together the surfaces of their lathered hands and arms for at least 20 seconds and thoroughly rinsing with clean water. EMPLOYEES shall pay particular attention to the areas underneath the fingernails and between the fingers.”

³ “When to Wash,” which is set forth in Section 2-301.14 of the *Maine Code*, provides in part: “FOOD EMPLOYEES shall clean their hands and exposed portions of their arms as specified

imprisonment...”

In truth and in fact, this provision is derived from “Annex 1,” which is appended to the 2005 *Federal Code*, and is intended to provide the states with “an array of enforcement mechanisms” that they may choose, or not choose, to adopt. As is true with the *Federal Code*, Annex 1 is not federal law. By inserting a fine amount of “2500 dollars,” Defendants have misrepresented the actual language of Annex 1, which has no fine amount: “A PERSON who violates a provision of this Code shall be guilty of a misdemeanor, punishable by: (1) A fine of not more than (designate amount) dollars . . .” (emphasis added).

There is no section 8-811.10 in the *Maine Code*. Violations of the *Maine Code* are governed by 22 M.R.S.A. §§ 2498 and 2500, which permit the imposition of penalties not to exceed \$100 per violation, with each day being a separate offense so long as the violation remains uncorrected, and suspension or revocation of the establishment’s license.

COUNT I

27. The State repeats, realleges, and incorporates herein by reference paragraphs 1 through 26 of this Complaint.

28. MPA’s failure to file an application with the Secretary of State for authority to conduct business as a foreign corporation in the State of Maine is a violation of 13-C M.R.S.A. § 1501(1).

under §2-301.12 immediately before engaging in FOOD preparation including working with

COUNT II

29. The State repeats, realleges, and incorporates herein by reference paragraphs 1 through 26 of this Complaint.

30. Defendants' use of a personal mailbox located in Augusta, Maine as a business address, when it has no office in Augusta or anywhere in the State of Maine, creates the misimpression or misperception that The Maine Labor Law Poster Service and the Maine Food Service Compliance Center have offices in Maine, which is an unfair and deceptive practice on the part of Defendants.

31. Defendants' conduct, as described in this count, is intentional and a violation of 5 M.R.S.A. § 207.

COUNT III

32. The State repeats, realleges, and incorporates herein by reference paragraphs 1 through 26 of this Complaint.

33. Defendants' use of certain language, terms, typeface and symbols in the context of their solicitation materials and on their mailing envelopes create the misimpression or misperception that The Maine Labor Law Poster Service is a government agency or that it has a contract with a government agency, and that purchase of Defendants' product(s) is required in order to comply with state and/or federal law, which is an unfair and deceptive

exposed FOOD, clean EQUIPMENT and UTENSILS. . . ."

practice.

34. Defendants' conduct, as described in this count, is intentional and a violation of 5 M.R.S.A. § 207.

COUNT IV

35. The State repeats, realleges, and incorporates herein by reference paragraphs 1 through 26 of this Complaint.

36. Defendants have misrepresented directly, or by implication or omission of material fact, the legal requirements or the statutory text of certain labor law postings in their solicitation materials, which is an unfair or deceptive practice on the part of Defendants.

37. Defendants' conduct, as described in this count, is intentional and a violation of 5 M.R.S.A. § 207.

COUNT V

38. The State repeats, realleges, and incorporates herein by reference paragraphs 1 through 26 of this Complaint.

39. Defendants' use of certain language, terms, typeface and symbols in the context of their solicitation materials, including their mailing envelopes, for handwashing posters create the misimpression or misperception that the Maine Food Service Compliance Center is a government agency or that it has a contract with a government agency, and that purchase of Defendants' product is required in order to comply with state and federal law, which is an unfair or deceptive practice.

40. Defendants' conduct, as described in this count, is intentional and a violation of 5 M.R.S.A. § 207.

COUNT VI

41. The State repeats, realleges, and incorporates herein by reference paragraphs 1 through 26 of this Complaint.

42. Defendants' statements in their solicitations for handwashing posters that directly or indirectly imply that a violation of the federal food code is a violation of federal law are misrepresentations, which is a deceptive practice.

43. Defendants' conduct, as described in this count, is intentional and a violation of 5 M.R.S.A. § 207.

COUNT VII

44. The State repeats, realleges, and incorporates herein by reference paragraphs 1 through 26 of this Complaint.

45. Defendants' statement in their solicitations for handwashing posters that "State and Federal food codes have recently been amended to include a new hand washing requirement" is a misrepresentation or misleading, which is a deceptive practice.

46. Defendants' conduct, as described in this count, is intentional and a violation of 5 M.R.S.A. § 207.

COUNT VIII

47. The State repeats, realleges, and incorporates herein by reference

paragraphs 1 through 26 of this Complaint.

48. Defendants' statements in their solicitations for handwashing posters that handwashing posters must meet the "exact specifications and procedures presented in section 2-301.12," and that they "should not be self-made" are misrepresentations, which is a deceptive practice.

49. Defendants' conduct, as described in this count, is intentional and a violation of 5 M.R.S.A. § 207.

COUNT IX

50. The State repeats, realleges, and incorporates by reference paragraphs 1 through 26 of this Complaint.

51. Defendants' statement in their solicitations for handwashing posters that "Investigations will be conducted by your local inspectors" is a misrepresentation or misleading, which is a deceptive practice.

52. Defendants' conduct, as described in this count, is intentional and a violation of 5 M.R.S.A. § 207.

COUNT X

53. The State repeats, realleges, and incorporates by reference paragraphs 1 through 26 of this Complaint.

54. Defendants' cite in their solicitations for handwashing posters to section 8-811.10 as the authority for "fines of up to 2500 dollars" for violations of the "State and Federal Food Code" is a misrepresentation, which is a deceptive practice.

55. Defendants' conduct, as described in this count, is intentional and a violation of 5 M.R.S.A. § 207.

RELIEF REQUESTED

Accordingly, the State requests that this Court:

A. Declare that MPA has violated 13-C M.R.S.A. § 1501(1) and 5 M.R.S.A. § 207, and that Steven J. Fata, Thomas Fata, and Joe Fata have violated 5 M.R.S.A. § 207;

B. Declare that each violation of 5 M.R.S.A. § 207 by MPA, Steven J. Fata, Thomas Fata and Joe Fata resulted from intentional and unfair or deceptive conduct on their parts;

C. Issue a permanent injunction enjoining MPA, Steven J. Fata, Thomas Fata, and Joe Fata, their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them who receive actual notice of the injunction from directly or indirectly soliciting, offering for sale, selling or distributing workplace posters;

D. Order Defendants to pay a civil penalty of up to \$10,000 for each intentional violation of 5 M.R.S.A. § 207, pursuant to 5 M.R.S.A. § 209;

E. Order Defendants to pay a civil penalty of \$500 for each year, or portion thereof, that MPA conducted business in the State of Maine without filing an application with the Secretary of State for authority to do so, pursuant to 13-C M.R.S.A. § 1502(4);

F. Order Defendants to notify all persons in Maine who bought

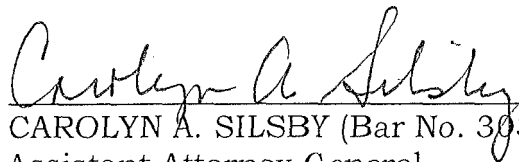
Defendants' products from MPA, d/b/a The Maine Labor Law Poster Service or the Maine Food Service Compliance Service, is not a government agency and that it does not have a contract with a government agency to provide mandatory workplace posters, that all posters containing the same or like information may be obtained free of charge from the issuing government agencies, and that refunds, including reimbursement of shipping charges, will be made immediately to all persons, upon request, who purchased Defendants' product;

G. Order Defendants to pay to the State its costs of the investigation and litigation, including its attorney's fees, pursuant to 5 M.R.S.A § 209 and 14 M.R.S.A. § 1522(1)(A); and

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

DATED at Augusta, Maine, this 16th day of October, 2006.

G. STEVEN ROWE
Attorney General



CAROLYN A. SILSBY (Bar No. 3030)
Assistant Attorney General
Office of the Attorney General
6 State House Station
Augusta, Maine 04333-0006
(207) 626-8829

Attorneys for State of Maine

EXHIBIT 1

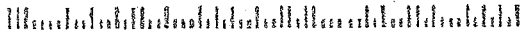


MAINE
FOOD SERVICE COMPLIANCE CENTER
126 WESTERN AVE #338
AUGUSTA, MAINE 04330
1-800-870-2669

207 287-5671

THIS CENTER EMPLOYS AND
SERVES PEOPLE WITH
DISABILITIES WITHOUT
DISCRIMINATION

*****AUTO**3-DIGIT 042



ATTN: FOOD SERVICE MANAGER
VILLAGE FARM CATERERS
37 BUCKFIELD RD
TURNER, ME 04282-4302

Faxed

August 14, 2006
BUSINESS ID #: 957259351

RECEIVED

AUG 29 2006

HEALTH INSPECTION
PROGRAM

Fax
287-3165

ADVISORY TO ALL FOOD LICENSEES!

Dear Food Service Establishment,

State and Federal food codes have recently been amended to include a new hand washing posting requirement. Effective immediately all Food Service Establishments will be required to post at all hand washing facilities a poster reminding FOOD SERVICE EMPLOYEES to regularly wash their hands. This requirement applies to all hand washing sinks and all public and private lavatories. It also applies to all food preparers regardless if they are a paid employee or not, including owners and operators. Posters must also meet the exact specifications and procedures presented in section 2-301.12 of the code and should not be self-made. Investigations will be conducted by your local inspectors. Any Food Service Establishment found to be in violation of State or Federal law by willfully failing to post approved hand washings posters may be subject to fines up to \$2500 and suspension or revocation of license, as well as possible civil liability actions. The MFSCC is a non-governmental organization providing mandatory Approved Hand Washing Posters and does not have a contract with any government agency. Therefore to achieve compliance with State and Federal hand washing posting requirements, please respond to the order form below or call the MFSCC at 1-800-870-2669. You should comply today. Thank you for your continued cooperation.

STATE AND FEDERAL FOOD CODE

6-301.14 HAND WASHING POSTING REQUIREMENT

"A sign or poster that notifies all FOOD EMPLOYEES to wash their hands shall be provided at all hand washing lavatories used by FOOD EMPLOYEES and shall be clearly visible to all FOOD EMPLOYEES."

2-301.12 PROPER HAND WASHING PROCEDURE

"FOOD EMPLOYEES shall clean their hands and exposed portions of their arms as specified under § 2-301.12 immediately before engaging in FOOD preparation including working with exposed FOOD, cleaning EQUIPMENT and UTENSILS..."

8-811.10 FINES & SENTENCES

- (B) "A person who violates a provision of this code shall be guilty of a misdemeanor, punishable by: (1) a fine of not more than 2500 dollars, or by imprisonment not exceeding one year, or both the fine and imprisonment..."
- (C) "Each day on which a violation occurs is a separable violation under this section."

PLEASE RESPOND TODAY TO THE ENCLOSED!

STATE OF MAINE
KENNEBEC, ss.

SUPERIOR CT
Dkt No. 10CV-05-297

STATE OF MAINE

V

DECISION

THE MANDATORY POSTER
AGENCY, INC, et al

Before this court was the State's four count complaint alleging that the defendants have violated the Maine Unfair Trade Practices Act. Count 1 was dismissed prior to the non-jury trial held on April 14 and 15. Counts 2 and 4 were dismissed pursuant to the court granting the defendant's motion for directed verdict at the conclusion of the State's case.

Following the conclusion of the evidence the court concluded that the State failed to carry its burden of proving that the Defendants violated Maine's Unfair Trade Practices Act as alleged in Count 3. The court set out its findings and conclusions on the record.

Therefore, the court hereby ORDERS that judgment be entered in favor of the defendants on all four Counts.

Dated: April 15, 2008



JOSEPH LABAK
SUPERIOR COURT

***** -IND. XMT JOURNAL- ***** DATE JUN-07-2011 ***** TIME 13:31 *****

DATE/TIME = JUN-07-2011 13:30
JOURNAL No. = 36
COMM. RESULT = OK
PAGE(S) = 002
DURATION = 00:00:32
FILE No. = 468
MODE = MEMORY TRANSMISSION
DESTINATION = 95152816771
RECEIVED ID = / 5152816771
RESOLUTION = STD

-ATTORNEY GENERAL -

***** -207 624 7730 - ***** 207 624 7730- *****

STATE OF MAINE
KENNEBEC, ss.

SUPERIOR COURT
CIVIL ACTION
Docket No. CV-05-

STATE OF MAINE,)	
)	
Plaintiff,)	
)	
v.)	COMPLAINT
)	(Injunctive Relief Requested)
THE MANDATORY POSTER)	
AGENCY, INC., d/b/a THE MAINE)	
LABOR LAW POSTER SERVICE,)	
)	
and)	
)	
THOMAS FATA, STEVEN J. FATA,)	
AND JOE FATA,)	
)	
Defendants)	

INTRODUCTION

1. The Attorney General brings this action in the name of the State of Maine pursuant to the Maine Unfair Trade Practices Act (“UTPA”), 5 M.R.S.A. Sections 205-A to 214, and 13-C M.R.S.A. § 1502(4).

PARTIES

2. Plaintiff State of Maine (the “State”) is a sovereign state.

3. Defendant The Mandatory Poster Agency, Inc., d/b/a The Maine Labor Law Poster Service (“MPA”), is a closely-held Michigan corporation with a principal business office at 6323 West Saginaw, Suite E, Lansing, Michigan 48917.

4. Defendant Thomas Fata is, and was at all times relevant hereto, the President of MPA. His address is 4335 Appletree Lane, Lansing, Michigan 48917.

5. Defendant Steven J. Fata is, and was at all times relevant hereto, the Vice President of MPA. His address is 2511 Sugartree Trail, Lansing, Michigan 48917.

6. Defendant Joe Fata is, and was at all times relevant hereto, the Treasurer of MPA. His address is 4337 Blackberry Lane, Lansing, Michigan 48917.

JURISDICTION AND VENUE

7. This Court has jurisdiction over this action pursuant to 4 M.R.S.A. Section 105 and 5 M.R.S.A. § 209, and jurisdiction over Defendants pursuant to 14 M.R.S.A. § 704-A.

8. Venue is properly laid in this county pursuant to 5 M.R.S.A. § 209.

STATUTORY BACKGROUND

9. Pursuant to 5 M.R.S.A. § 207, “unfair or deceptive acts or practices in the conduct of any trade or commerce are . . . unlawful.”

10. Pursuant to 5 M.R.S.A. § 209:

Whenever the Attorney General has reason to believe that any person is using or is about to use any method, act or practice declared by section 207 to be unlawful, and that proceedings would be in the public interest, he may bring an action in the name of the State against such person to restrain by temporary or permanent injunction the use of such method, act or practice and the court may make such orders or

judgments as may be necessary to restore to any person who has suffered any ascertainable loss by reason of the use or employment of such unlawful method, act or practice, any moneys or property, real or personal, which may have been acquired by means of such method, act or practice. . . .

11. Pursuant to 5 M.R.S.A. § 209, each violation of 5 M.R.S.A. § 207 that results from intentional and unfair or deceptive conduct is a civil violation for which a civil penalty of up to \$10,000 may be adjudged.

12. Pursuant to 13-C M.R.S.A. § 102(13), a “foreign corporation” means “a corporation incorporated for profit under a law other than the law of this State that would be a business corporation if incorporated under the laws of this State.”

13. Pursuant to 13-C M.R.S.A. § 1501(1), “[a] foreign corporation may not transact business in this State until the foreign corporation files an application for authority to transact business with the Secretary of State.”

14. Pursuant to 13-C M.R.S.A. § 1502(4), “[a] foreign corporation is liable for a civil penalty of \$500 for each year, or portion thereof, it transacts business in this State without authority. The Attorney General may collect all penalties due under this subsection.”

15. Pursuant to 14 M.R.S.A. § 1522(1)(A), the Court shall allow litigation costs, including court costs, reasonable attorney’s fees and reasonable expert witness fees, should the State prevail in an action brought by the Attorney General to enforce 5 M.R.S.A. § 209.

FACTS

16. Based on knowledge and belief, beginning sometime before 2004, Defendants, through MPA, have offered for sale, sold, and distributed by mail “mandatory posters,” or posters that employers are required by state and/or federal law to post in their workplaces, to persons in Maine.

17. MPA, a foreign corporation, has never filed an application with the Secretary of State for authority to conduct business in the State of Maine as required by 13-C M.R.S.A. § 1501(1).

18. Defendants use an address for MPA on their solicitation materials and mailing envelopes of 126 Western Avenue #338, Augusta, Maine 04330-7252, which is the address of a personal mailbox. Defendants do not maintain an office in the City of Augusta nor do they have an office anywhere else in the State of Maine.

19. Defendants use certain language, terms, typeface, and symbols in the context of their solicitation materials and on their mailing envelopes to create the misimpression or misperception that MPA is a government agency, or that it has a contract with a government agency to provide mandatory workplace posters, and that purchase of Defendants’ product or products is required in order to comply with state and/or federal law. Examples of such language, terms, typeface, and symbols include, but are not limited to, the following:

- a) Using the symbol of an eagle in MPA’s logo;

- b) Referring to or emphasizing the possible criminal or civil penalties that may be imposed on persons who fail to comply with current labor poster laws;
- c) Referring to investigations that may be conducted by state inspectors;
- d) Using "Notice Numbers" or similar identifiers;
- e) Using language regarding "compliance" with state and/or federal laws;
- f) Using the words "service," "mandatory," and/or "agency" in Defendants' company names.
- g) Failing to clearly and conspicuously state that MPA is not a government agency, and that MPA does not contract with a government agency to provide mandatory workplace posters.
- h) Failing to clearly and conspicuously state that all required notices may be obtained free of charge from the issuing government agencies.

20. Defendants inaccurately or incompletely cite to the legal requirements or the statutory texts of certain labor law postings in their solicitation materials, including, but not limited to, a cite to the posting requirements contained in 26 M.R.S.A. § 701, which was repealed in 2001.

COUNT I

21. The State repeats, realleges, and incorporates herein by reference

paragraphs 1 through 20 of this complaint.

22. MPA's failure to file an application with the Secretary of State for authority to conduct business as a foreign corporation in the State of Maine is a violation of 13-C M.R.S.A. § 1501(1).

COUNT II

23. The State repeats, realleges, and incorporates herein by reference paragraphs 1 through 20 of this complaint.

24. Defendants' use of a personal mailbox located in Augusta, Maine as a business address, when it has no office in Augusta or anywhere in the State of Maine, creates the misimpression or misperception that MPA has an office in Maine, which is an unfair and deceptive practice on the part of Defendants.

25. Defendants' conduct, as described in this count, is intentional and a violation of 5 M.R.S.A. § 207.

COUNT III

26. The State repeats, realleges, and incorporates herein by reference paragraphs 1 through 20 of this complaint.

27. Defendants' use of certain language, terms, typeface and symbols in the context of their solicitation materials and on their mailing envelopes create the misimpression or misperception that MPA is a government agency or that MPA has a contract with a government agency, and that purchase of Defendants' product is required in order to comply with state and/or federal

law, which is an unfair and deceptive practice.

28. Defendants' conduct, as described in this count, is intentional and a violation of 5 M.R.S.A. § 207.

COUNT IV

29. The State repeats, realleges, and incorporates herein by reference paragraphs 1 through 20 of this complaint.

30. Defendants have misrepresented directly, or by implication or omission of material fact, the legal requirements or the statutory text of certain labor law postings in their solicitation materials, which is an unfair or deceptive practice on the part of Defendants.

31. Defendants' conduct, as described in this count, is intentional and a violation of 5 M.R.S.A. § 207.

RELIEF REQUESTED

Accordingly, the State requests that this Court:

A. Declare that MPA has violated 13-C M.R.S.A. § 1501(1) and 5 M.R.S.A. § 207, and that Steven J. Fata, Thomas Fata, and Joe Fata have violated 5 M.R.S.A. § 207;

B. Declare that each violation of 5 M.R.S.A. § 207 by MPA, Steven J. Fata, Thomas Fata and Joe Fata resulted from intentional and unfair or deceptive conduct on their parts;

C. Issue a permanent injunction enjoining MPA, Steven J. Fata, Thomas Fata, and Joe Fata, their officers, agents, servants, employees, and

attorneys, and those persons in active concert or participation with them who receive actual notice of the injunction from:

(1) Directly or indirectly soliciting, offering for sale, selling or distributing workplace posters by using solicitation materials and mailing envelopes that contain language, terms, typeface or symbols that have the tendency or capacity to create a misimpression or misperception that the materials are sent from a government agency, or from one who has a contract with a government agency, or that purchase of Defendants' product or products is required in order to comply with state and/or federal law, including, but not limited to:

- a) Using the symbol of an eagle, the outline of the State of Maine, or of the United States;
- b) Referring to or emphasizing the possible criminal or civil penalties that may be imposed on persons who fail to comply with current labor poster laws;
- c) Referring to investigations that may be conducted by state inspectors;
- d) Using "Notice Numbers" or similar identifiers;
- e) Using language regarding "compliance" with state and/or federal laws;
- f) Using the words "service," "mandatory," and/or "agency" in Defendants' company names;

- g) Failing to clearly and conspicuously state that Defendants' business entity is not a government agency, and that the entity does not have a contract with a government agency;
- h) Failing to clearly and conspicuously state in their solicitation material that all required notices may be obtained free of charge from the issuing government agencies.

(2) Misrepresenting directly, or by implication or omission of material fact, the legal requirements or the statutory text of a labor law posting in any solicitation.

(3) Failing to clearly and conspicuously state that MPA's address is to a personal mailbox, and that MPA does not have a business office in Maine.

D. Order Defendants to pay a civil penalty of up to \$10,000 for each intentional violation of 5 M.R.S.A. § 207, pursuant to 5 M.R.S.A. § 209;

E. Order Defendants to pay a civil penalty of \$500 for each year, or portion thereof, that MPA conducted business in the State of Maine without filing an application with the Secretary of State for authority to do so, pursuant to 13-C M.R.S.A. § 1502(4);

F. Order Defendants to notify all persons in Maine who bought Defendants' product that MPA is not a government agency and that it does not have a contract with a government agency to provide mandatory workplace posters, that all posters containing the same or like information may be

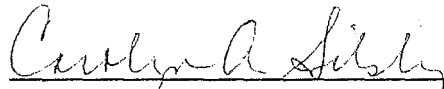
obtained free of charge from the issuing government agencies, and that refunds, including reimbursement of shipping charges, will be made immediately to all persons, upon request, who purchased Defendants' product;

G. Order Defendants to pay to the State its costs of the investigation and litigation, including its attorney's fees, pursuant to 5 M.R.S.A § 209 and 14 M.R.S.A. § 1522(1)(A); and

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

DATED at Augusta, Maine, this 29th day of November, 2005.

G. STEVEN ROWE
Attorney General



CAROLYN A. SILSBY (Bar No. 3030)
Assistant Attorney General
Office of the Attorney General
6 State House Station
Augusta, Maine 04333-0006
(207) 626-8829

Attorneys for State of Maine