

*STATE OF MAINE
DEPARTMENT OF ATTORNEY GENERAL
MEMORANDUM*

TO: Chuck Dow, Director of Communication and Legislative Affairs
FROM: James McKenna, Assistant Attorney General
SUBJECT: *State v. Marc Motors*
DATE: March 16, 2001

The Consent Decree has been signed by the Court and this \$7,500 civil penalty has been paid. Therefore, the press release is ready to go out. Please find attached a proposed press release and a copy of the Consent Decree. Please let me know what you would like me to do.



James A. McKenna
Assistant Attorney General

JAM/sp
Enc.

G. STEVEN ROWE
ATTORNEY GENERAL



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JAMES McKENNA,
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207-626-8842

FOR IMMEDIATE RELEASE:
March 13, 2001

MARC MOTORS, INC. AGREES TO SETTLE COMPLAINT
THAT IT FAILED TO POST DOCUMENT FEES

Attorney General Steven Rowe announced today that his Public Protection Division and Marc Motors, Inc., a Sanford, Maine dealership, have entered into an Unfair Trade Practice Consent Decree, which requires Marc Motors to post on its vehicles the amount of any document preparation fee that will be added to the vehicle's sale price. "Posting document fees is specifically required by Maine law and is a good way to prevent consumer purchasers from being surprised at the last moment by an additional change," said Attorney General Rowe.

The Attorney General's Complaint alleged that Marc Motors was typically charging \$289.00 in document preparation fees but failing to post that amount on the vehicles it was offering for sale. In addition to entering into a Consent Decree, Marc Motors, Inc. also agreed to pay to the State a \$7,500 civil penalty.

Attorney General Rowe emphasized that dealers are not required to charge document preparation fees and that consumers can negotiate not to pay them or to pay less than the dealer is asking.

By entering into this Consent Decree settlement, Marc Motors, Inc. did not admit to wrongdoing and the Court did not find any violation of law. Attorney General Rowe thanked the State Bureau of Motor Vehicles for its assistance in investigating this matter.

* * * * *

RECEIVED
MAR 14 2001

STATE OF MAINE
KENNEBEC, ss.

DEPT. OF ATTORNEY GENERAL
SUPERIOR COURT
CIVIL ACTION
DOCKET NO. CV-~~00~~-01-36

STATE OF MAINE,)
)
 Plaintiff)
)
 v.)
)
 MARC MOTORS, INC.,)
 A Maine Corporation)
)
 Defendant)

CONSENT DECREE
(Maine Unfair Trade
Practices Act 5 M.R.S.A. §207)

Plaintiff, State of Maine, has filed its Complaint in the above-captioned matter on 3/9/01. The State of Maine and Defendant Marc Motors, Inc., doing business at 465 Main Street, Sanford, Maine, have consented to the entry of this Consent Decree without trial or adjudication of issue of fact or law herein. This Decree does not constitute evidence against the Defendant or an admission by the Defendant of any wrongdoing or of any of the allegations in the Plaintiff's Complaint.

NOW, THEREFORE, before the taking of any testimony and without trial or adjudication of any fact or law herein, and upon the consent of the parties hereto, it is hereby ordered and decreed as follows:

1. This Court has jurisdiction over the subject matter of this action and over the parties consenting to this Decree. This Complaint states claims which may be granted against Defendant pursuant to the Maine Unfair Trade Practices Act (UTPA), 5 M.R.S.A. §§206-214 (1989 and Pamph. 2000) and 29-A M.R.S.A. §953-A.

2. Defendant Marc Motors, Inc., its agents, employees, assigns or other persons acting for the Defendant or under its control or guidance are permanently enjoined and restrained from failing to post on any vehicle being offered for sale any document preparation fee that will be added to the vehicle's sale price.

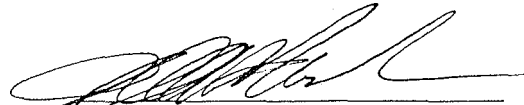
3. Pursuant to 5 M.R.S.A. §209, the Defendant is ordered to pay the Department of the Attorney General a civil penalty of \$7,500. This civil penalty shall be paid by certified bank check or money order payable to the Department of the Attorney General.

4. Jurisdiction is retained by this Court for the purpose of enabling any party of this Consent Decree to apply to this Court at any time for such further orders as may be necessary for the construction, modification or enforcement of any of the provisions of this Decree.

5. Any violation by the Defendant of the mandatory injunctions listed above in Paragraphs two and three shall be subject to the civil penalty listed in 5 M.R.S.A. §209.

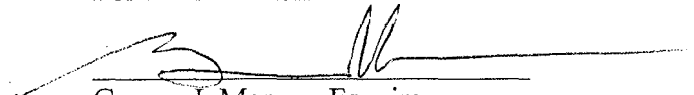
6. The undersigned, with the knowledge of the terms of the above Consent Decree, agree to these terms and to the entry of this Decree.

Dated: 3-12-01


Justice, Superior Court

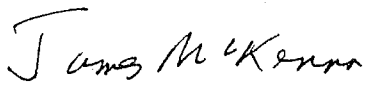
Dated: 3/11/01

For the Defendant:


George J. Marcus, Esquire

Dated: 3/5/01

For the Plaintiff:


James A. McKenna
Assistant Attorney General
Office of Attorney General
#6 State House Station
Augusta, Maine 04333
Tel: 626-8800
Maine Bar No. 1735

STATE OF MAINE
KENNEBEC, ss.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. CV-00-_____

STATE OF MAINE,)
)
 Plaintiff)
)
 v.)
)
 MARC MOTORS, INC.,)
 A Maine Corporation)
)
 Defendant)

UNFAIR TRADE
PRACTICE COMPLAINT
(Injunctive Relief Requested)

INTRODUCTION

1. The Plaintiff, State of Maine, brings this action by and through the Attorney General pursuant to 29-A M.R.S.A. §953-A (Document Fees) and 5 M.R.S.A. §209 (the Maine Unfair Trade Practices Act (hereinafter “UTPA”)) to enjoin the Defendant from failing to post on its new and used vehicles notice of the amount it will charge for preparing documents. The State also seeks restitution for persons injured by this practice and civil penalties for intentional violations of the UTPA.

PARTIES

2. Plaintiff, State of Maine, is a sovereign State and brings this action by and through its Attorney General pursuant to 5 M.R.S.A. §§191 and 209 and the powers vested in him by common law.

3. The Defendant is a Maine corporation, with a business address of 465 Main Street, Sanford, Maine.

JURISDICTION AND VENUE

4. This Court has jurisdiction over this matter pursuant to 4 M.R.S.A. §105 and 5 M.R.S.A. §209.

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

STATUTORY BACKGROUND

6. Pursuant to 29-A M.R.S.A. §953-A, motor vehicle dealers selling new or used motor vehicles must post on the vehicle any document preparation fee that will be added to the vehicle's sale price. This statute became effective September 18, 1999. Violation of this section is *prima facie* evidence of an unfair trade practice and is a violation of 5 M.R.S.A. §207, the Maine Unfair Trade Practices Act.

7. Pursuant to 5 M.R.S.A. §207, unfair and deceptive trade practices in trade or commerce are declared to be unlawful.

8. Pursuant to 5 M.R.S.A. §209, whenever the Attorney General has reason to believe that a person is using or is about to use any method, act or practice declared by §207 to be unlawful, and that proceeding 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 other orders or judgments as may be necessary to restore to any person who has suffered any ascertainable loss by reason of the use of such unlawful method, act or practice, any money or property which may have been acquired by means of such method, act or practice.

FACTS

9. The Defendant is a Maine corporation which operates a new and used motor vehicle dealership located at 465 Main Street, Sanford, Maine 04073.

10. On June 3, 2000, the Defendant sold to Carrie E. Kuriger a 1997 used Dodge Neon for a base price of \$9,995. In addition, Ms. Kuriger was charged a "documentation fee" of \$289.00.

11. Subsequent to this purchase, Mr. David E. Kuriger, the father of Ms. Kuriger, complained to the Defendant concerning the \$289.00 document fee. He initially talked with the Marc Motors General Manager and informed him that document fees, by State law, must be posted on any vehicle being offered for sale. The General Manager referred Mr. Kuriger to Marc Greenburg, the Vice President of Marc Motors.

12. In a July 8, 2000 conversation with both the General Manager and Marc Greenburg, Mr. Kuriger was told that Marc Motors would return the \$289.00 document fee.

13. When Marc Motors then failed to refund the document fee, Mr. Kuriger completed an Attorney General Motor Vehicle Complaint Form. This complaint was dated August 3, 2000 and in due course the Department of the Attorney General forwarded Mr. Kuriger's complaint to the Defendant.

14. By letter dated August 16, 2000, Marc Motors refunded the \$289.00 document fee to Ms. Kuriger.

15. On August 30, 2000 Bureau of Motor Vehicles Investigator Roger P. Nagy visited the Marc Motors dealership. Investigator Nagy calculated that Marc Motors was offering for sale approximately 80 new and 80 used vehicles. Examining these vehicles he found five new vehicles

with posted document preparation fees. None of the used vehicles had posted document preparation fees.

16. Investigator Nagy interviewed Ed Kingsley, the Marc Motors General Manager. Mr. Kingsley stated he had worked for Marc Motors for only about two weeks. Mr. Kingsley further stated that he was aware that the dealership was required to post new motor vehicles with documentation fees. However, he stated he did not realize that documentation fees must also be posted on used vehicles.

COUNT I

(Violation of Unfair Trade Practices Act – Failure to Post Document Fee)

17. Plaintiff repeats and realleges the preceding paragraphs of this Complaint.

18. The Defendant fails to post on its new or used motor vehicles being offered for sale the \$289.00 document preparation fee customers are automatically charged.

19. The Defendant's failure to post document preparation fees on its new or used vehicles is a violation of 29-A M.R.S.A. §953-A, Document Fees.

20. The Defendant's practice constitutes a violation of the Maine Unfair Trade Practices Act, 5 M.R.S.A. §207.

21. The Defendant's violation of 5 M.R.S.A. §207 is intentional.

COUNT II

(Violation of the Unfair Trade Practices Act – Deceptive Sale Practice)

22. Plaintiff repeats and realleges the preceding paragraphs of this Complaint.

23. The Defendants when selling new or used motor vehicles bargain with potential customers over the price of a vehicle. When the parties agree on a sale price, the Defendant does not disclose that that sale price will be increased by a \$289.00 document preparation fee.

24. This document preparation fee is not disclosed until the consumer purchaser is subsequently presented with a written Buyer's Order.

25. Failing to disclose the \$289.00 document preparation fee until after the parties have agreed upon a sale price is both unfair and deceptive and a violation of the Maine Unfair Trade Practices Act, 5 M.R.S.A. §207.

26. The Defendant's violation of 5 M.R.S.A. §207 was intentional.

RELIEF REQUESTED

Plaintiff requests the following relief:

1. Declare that the conduct of the Defendant, as described in this Complaint, violated the Maine Unfair Trade Practices Act, 5 M.R.S.A. §207.

2. Pursuant to 5 M.R.S.A. §209, permanently enjoin the Defendant, its associates, agents, employees, or any person in active concert or participation with the Defendant, from:

A. Agreeing either verbally or in writing to the sale price of a vehicle without informing the purchaser that the agreed upon sale price includes a \$289.00 documentation fee.

B. Selling new or used motor vehicles without posting a documentation fee in violation of 29-A M.R.S.A. §953-A.

3. Pursuant to 5 M.R.S.A. §209 order the Defendant to reimburse the document fee charged any customer who purchased a motor vehicle after September 18, 1999 which did not have posted on it notice of the document preparation fee.

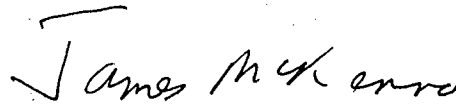
4. Pursuant to 5 M.R.S.A. §209, order the Defendant to pay the Department of the Attorney General a civil penalty of up to \$10,000 for each intentional violation of the Unfair Trade Practices Act.

5. Pursuant to 5 M.R.S.A. §209, order the Defendant to pay the Department of the Attorney General the cost of this suit, including its attorneys fees.

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

Respectfully submitted,

ANDREW KETTERER
ATTORNEY GENERAL



JAMES A. MCKENNA
ASSISTANT ATTORNEY GENERAL
Office of Attorney General
#6 State House Station
Augusta, Maine 04333
Tel: (207) 626-8800
Bar No: 1735

Attorneys for the State of Maine

Dated: 3/5/01

*STATE OF MAINE
DEPARTMENT OF ATTORNEY GENERAL
MEMORANDUM*

TO: Chuck Dow, Director of Communication and Legislative Affairs
FROM: James McKenna, Assistant Attorney General
SUBJECT: *State v. Marc Motors*
DATE: March 16, 2001

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Assistant Attorney General

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CONTACT:
JAMES MCKENNA,
ASSISTANT ATTORNEY GENERAL
207-626-8842

FOR IMMEDIATE RELEASE:
March 13, 2001

MARC MOTORS, INC. AGREES TO SETTLE COMPLAINT
THAT IT FAILED TO POST DOCUMENT FEES

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- more -

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By entering into this Consent Decree settlement, Marc Motors, Inc. did not admit to wrongdoing and the Court did not find any violation of law. Attorney General Rowe thanked the State Bureau of Motor Vehicles for its assistance in investigating this matter.

* * * * *

TRUST DIVISION
RECEIVED
MAR 14 2001

STATE OF MAINE
KENNEBEC, ss.

SUPERIOR COURT, DEPT. OF ATTORNEY GENERAL
CIVIL ACTION 01
DOCKET NO. CV-~~00~~- 36

STATE OF MAINE,)
)
 Plaintiff)
)
 v.)
)
 MARC MOTORS, INC.,)
 A Maine Corporation)
)
 Defendant)

CONSENT DECREE
(Maine Unfair Trade
Practices Act 5 M.R.S.A. §207)

Plaintiff, State of Maine, has filed its Complaint in the above-captioned matter on 3/9/01. The State of Maine and Defendant Marc Motors, Inc., doing business at 465 Main Street, Sanford, Maine, have consented to the entry of this Consent Decree without trial or adjudication of issue of fact or law herein. This Decree does not constitute evidence against the Defendant or an admission by the Defendant of any wrongdoing or of any of the allegations in the Plaintiff's Complaint.

NOW, THEREFORE, before the taking of any testimony and without trial or adjudication of any fact or law herein, and upon the consent of the parties hereto, it is hereby ordered and decreed as follows:

1. This Court has jurisdiction over the subject matter of this action and over the parties consenting to this Decree. This Complaint states claims which may be granted against Defendant pursuant to the Maine Unfair Trade Practices Act (UTPA), 5 M.R.S.A. §§206-214 (1989 and Pamph. 2000) and 29-A M.R.S.A. §953-A.

2. Defendant Marc Motors, Inc., its agents, employees, assigns or other persons acting for the Defendant or under its control or guidance are permanently enjoined and restrained from failing to post on any vehicle being offered for sale any document preparation fee that will be added to the vehicle's sale price.

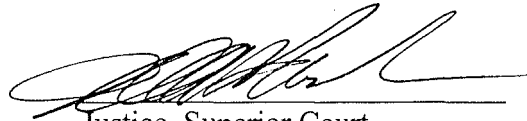
3. Pursuant to 5 M.R.S.A. §209, the Defendant is ordered to pay the Department of the Attorney General a civil penalty of \$7,500. This civil penalty shall be paid by certified bank check or money order payable to the Department of the Attorney General.

4. Jurisdiction is retained by this Court for the purpose of enabling any party of this Consent Decree to apply to this Court at any time for such further orders as may be necessary for the construction, modification or enforcement of any of the provisions of this Decree.

5. Any violation by the Defendant of the mandatory injunctions listed above in Paragraphs two and three shall be subject to the civil penalty listed in 5 M.R.S.A. §209.


6. The undersigned, with the knowledge of the terms of the above Consent Decree, agree to these terms and to the entry of this Decree.

Dated: 3-12-01


Justice, Superior Court

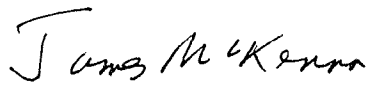
Dated: 3/1/01

For the Defendant:


George J. Marcus, Esquire

Dated: 3/5/01

For the Plaintiff:


James A. McKenna
Assistant Attorney General
Office of Attorney General
#6 State House Station
Augusta, Maine 04333
Tel: 626-8800
Maine Bar No. 1735

STATE OF MAINE
KENNEBEC, ss.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. CV-00-_____

STATE OF MAINE,)	
)	
Plaintiff)	
)	
v.)	UNFAIR TRADE
)	PRACTICE COMPLAINT
MARC MOTORS, INC.,)	(Injunctive Relief Requested)
A Maine Corporation)	
)	
Defendant)	

INTRODUCTION

1. The Plaintiff, State of Maine, brings this action by and through the Attorney General pursuant to 29-A M.R.S.A. §953-A (Document Fees) and 5 M.R.S.A. §209 (the Maine Unfair Trade Practices Act (hereinafter “UTPA”)) to enjoin the Defendant from failing to post on its new and used vehicles notice of the amount it will charge for preparing documents. The State also seeks restitution for persons injured by this practice and civil penalties for intentional violations of the UTPA.

PARTIES

2. Plaintiff, State of Maine, is a sovereign State and brings this action by and through its Attorney General pursuant to 5 M.R.S.A. §§191 and 209 and the powers vested in him by common law.

3. The Defendant is a Maine corporation, with a business address of 465 Main Street, Sanford, Maine.

JURISDICTION AND VENUE

4. This Court has jurisdiction over this matter pursuant to 4 M.R.S.A. §105 and 5 M.R.S.A. §209.

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

STATUTORY BACKGROUND

6. Pursuant to 29-A M.R.S.A. §953-A, motor vehicle dealers selling new or used motor vehicles must post on the vehicle any document preparation fee that will be added to the vehicle's sale price. This statute became effective September 18, 1999. Violation of this section is *prima facie* evidence of an unfair trade practice and is a violation of 5 M.R.S.A. §207, the Maine Unfair Trade Practices Act.

7. Pursuant to 5 M.R.S.A. §207, unfair and deceptive trade practices in trade or commerce are declared to be unlawful.

8. Pursuant to 5 M.R.S.A. §209, whenever the Attorney General has reason to believe that a person is using or is about to use any method, act or practice declared by §207 to be unlawful, and that proceeding 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 other orders or judgments as may be necessary to restore to any person who has suffered any ascertainable loss by reason of the use of such unlawful method, act or practice, any money or property which may have been acquired by means of such method, act or practice.

FACTS

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COUNT I

(Violation of Unfair Trade Practices Act – Failure to Post Document Fee)

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20. The Defendant's practice constitutes a violation of the Maine Unfair Trade Practices Act, 5 M.R.S.A. §207.

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COUNT II

(Violation of the Unfair Trade Practices Act – Deceptive Sale Practice)

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RELIEF REQUESTED

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B. Selling new or used motor vehicles without posting a documentation fee in violation of 29-A M.R.S.A. §953-A.

3. Pursuant to 5 M.R.S.A. §209 order the Defendant to reimburse the document fee charged any customer who purchased a motor vehicle after September 18, 1999 which did not have posted on it notice of the document preparation fee.

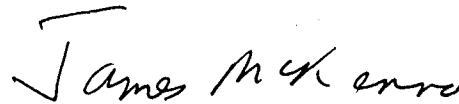
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6. Order such other and further relief as may be necessary to remedy the effects of the Defendant's unfair and deceptive trade practices.

Respectfully submitted,

ANDREW KETTERER
ATTORNEY GENERAL



JAMES A. MCKENNA
ASSISTANT ATTORNEY GENERAL
Office of Attorney General
#6 State House Station
Augusta, Maine 04333
Tel: (207) 626-8800
Bar No: 1735

Dated: 3/5/01

Attorneys for the State of Maine