

Formal  
Action

STATE OF MAINE  
PENOBSCOT, SS.

SUPERIOR COURT  
CIVIL ACTION  
DOCKET NO. CV-\_\_\_\_\_

STATE OF MAINE, )  
 )  
 Plaintiff )  
 )  
 v. )  
 )  
 MELVIN RAY BEARDEN, d/b/a )  
 THE MEAT MARKET, )  
 an enterprise with a )  
 principal place of business )  
 in Bangor, Maine; )  
 )  
 NATIONAL CREDIT CORPORATION, )  
 A NEW JERSEY CORPORATION, d/b/a )  
 NATIONAL CREDIT COMPANY, )  
 )  
 and FAIR FINANCE COMPANY, )  
 AN OHIO CORPORATION, d/b/a )  
 FAIR FINANCIAL SERVICES, )  
 )  
 Defendants )

VERIFIED COMPLAINT  
(Request for Preliminary and  
Permanent Injunctive Relief)

INTRODUCTION

1. The Attorney General brings this action on behalf of the State of Maine under the Unfair Trade Practices Act, 5 M.R.S.A. §§ 206-214, the Consumer Credit Code, 9-A M.R.S.A. §§ 3-403, 5-101 through 5-202, 6-202 and 6-110 through 6-113, and the Maine Weights and Measures Law, 10 M.R.S.A. §§ 2621-2629, the Foreign Corporations Act, 13-A M.R.S.A. §§ 1201-1217. The Attorney General seeks: declaratory relief; a permanent injunction against Defendant Melvin Ray Bearden and preliminary and permanent injunctions against Defendants National Credit Corporation and Fair Finance Company prohibiting continuing unfair, deceptive and illegal conduct; an accounting; restitution; and monetary penalties.

has subjected itself to the jurisdiction of this Court.

STATUTORY BACKGROUND  
(Unfair Trade Practices Act)

6. The Unfair Trade Practices Act, 5 M.R.S.A. § 207, makes it unlawful to engage in any unfair or deceptive acts or practices in the conduct of any trade or commerce.

7. Pursuant to 5 M.R.S.A. § 209, intentional violations of the Unfair Trade Practices Act carry a penalty of up to \$10,000 per violation.

(Consumer Credit Code)

8. The Consumer Credit Code, 9-A MRSA §3-403 provides that an assignee of the right of a seller with respect to a consumer credit sale is subject to all claims and defenses of the buyer against the seller that arise out of the sale.

9. Title 9-A M.R.S.A. § 5-108 makes credit transactions which are unconscionable or induced by unconscionable conduct unenforceable.

10. Title 9-A M.R.S.A. § 5-115 prohibits any creditor or person acting for him from inducing a consumer to enter into a consumer credit transaction by misrepresentation of a material fact with respect to the terms and conditions thereof.

11. Title 9-A M.R.S.A. § 5-117 prohibits a creditor/seller from misrepresenting any material fact relating to the terms or conditions of sale, creating an impression that is false or which the seller does not believe to be true, or promising performance which the seller does not intend to make or which the seller knows will not be made.

FACTS

19. Defendant Bearden operated a retail meat business with a store located at 1358 Union Street, Bangor, Maine. This store was named The Meat Market and Bearden operated it in association with John L. Davis. Since April 9, 1993, John L. Davis has been subjected by this Court to a Temporary Restraining Order which prohibits unfair or deceptive sales practices. Davis was specifically prohibited from enforcing the finance contracts entered into by The Meat Market with consumers who purchased meat pursuant to a credit transaction. See Exhibit A. Bearden is referred to below as "The Meat Market".

20. The Meat Market solicited consumers to purchase bulk quantities of beef by advertising, including newspaper advertising. See Exhibit B, copies of newspaper advertisements placed by The Meat Market in The Bangor Daily News which are part of the State's Complaint against Mr. Davis d/b/a The Meat Market and are incorporated herein by reference. The Meat Market ran these or similar advertisements in The Bangor Daily News beginning at least in March of 1993.

21. The Meat Market advertising represented availability of "specials". For example, "Special No. 1" consisted of 150 pounds of beef at a price of \$1.99 per pound (\$1.79 per pound plus a 20¢ per pound charge for cutting and wrapping). The Meat Market also advertised a "Special No. 2" at a total price of \$2.09 per pound.

22. The Meat Market's advertisements represented that a "free bonus pack" of 100 pounds of assorted meats would be given to anyone who opened an account and purchased "Special No. 1". A "45 pound bonus" at "absolutely no charge" was

27. The Meat Market prominently displayed in the waiting area of its store a price of "\$1.99". That price was identical to or approximately the same as the price per pound for meat in The Meat Market's advertised "specials."

28. Despite The Meat Market's large, frequent newspaper advertisements for low priced beef, The Meat Market routinely represented to consumers interested in purchasing the advertised beef that the advertised "specials" were unavailable and to disregard them. The Meat Market described the advertised "specials" as "examples." In telling consumers that the "specials" were unavailable and to disregard them, The Meat Market represented that the consumer were required to purchase a larger amount of meat than the 150 and 130 pound advertised "specials."

29. The Meat Market described the advertised "specials" as "examples" despite the fact that the advertisements were written in a manner intended to attract consumers to the Meat Market.

30. Consumers who expressed an interest in purchasing the beef advertised in Special No. 1 and Special No. 2 were taken to a cold storage locker and shown hanging hindquarters of beef. The hanging meat shown to consumers had not had the fat trimmed from it and was cut in such a manner as to display to the consumer the amount of fat on the piece of meat.

31. The Meat Market routinely disparaged the hanging untrimmed meat which represented the beef advertised in its "specials." In disparaging the advertised hanging beef from which the fat had not yet been trimmed, The Meat Market frequently compared it to meat which was already trimmed and packaged.

13 pounds of "cutting trim loss."

35. In encouraging consumers to purchase the trimmed beef, The Meat Market did not disclose that the trimmed meat, including the waste that was cut from the trimmed meat, cost \$7.99 per pound.

36. In those instances when The Meat Market discussed a per pound price with a consumer, they included in their calculation the pounds of "free" meat that were given to the consumer in the form of the "bonus pack." In this manner, the Meat Market avoided disclosing to the consumer the fact that the trimmed meat cost \$7.99 per pound.

37. The Meat Market routinely rushed consumers through the sales transaction. Consumers described the sales transaction as very hurried, high pressured, and confusing. Consumers' discussions with salespeople were routinely interrupted, and their questions about the purchasing or financing process routinely went unanswered. The Meat Market had instructed employees to load meat into a consumer's car prior to giving the consumer the opportunity to read and complete the sale documents.

38. The Meat Market required consumers to sign several documents in the course of completing the sales transaction. The Meat Market did not provide consumers with time to read the documents that they were asked to sign nor did the Meat Market fully or accurately describe the documents to them prior to asking them to "sign this."

low priced beef and a proportionally much larger inventory of the beef sold at \$7.99 per pound.

44. The Meat Market immediately assigned numerous finance contracts entered into with Maine consumers to Defendants National and Fair. As assignees, Defendants National and Fair acted to enforce these finance contracts. In each case, these contracts recite that "any holder of this consumer credit contract is subject to all claims ... which the debtor could assert against the seller," thus incorporating the requirements of the FTC Holder Rule, 16 C.F.R. §433 and the requirements of 9-A, M.R.S.A. §3-403.

45. On April 9, 1993, this Court granted the State's request pursuant to The Maine Unfair Trade Practices Act for a Temporary Restraining Order enjoining John L. Davis, d/b/a/ The Meat Market from continuing to use illegal trade practices in the sale of meat. This Temporary Restraining Order was amended on August 13, 1993. See Exhibit A. Paragraph K of this Temporary Restraining Order specifically prohibited Mr. Davis from enforcing the finance contracts:

K. Enforcing the financing contracts entered into by Defendant d/b/a The Meat Market, with consumers who purchased meat pursuant to a credit transaction.

46. In letters dated August 26, 1993, the State informed both Defendants National and Fair that it had commenced an Unfair Trade Practice complaint against Mr. Davis d/b/a The Meat Market. These letters included copies of the State's Complaint, which recounts in detail the sale practices described above in paragraphs 14 through 37, the already granted Temporary Restraining Order, the

52. The Meat Market's practice of attracting consumers to its place of business by advertising low priced beef which it subsequently disparaged and unfavorably compared to much higher priced trimmed meat in order to sell the higher priced meat constitutes bait and switch advertising, a pattern or practice of unfair and deceptive conduct in violation of 5 M.R.S.A. §207, the Maine Unfair Trade Practice Act.

53. The Meat Market's conduct as described herein was intentional.

COUNT TWO  
(Misrepresentations)

54. Plaintiff repeats, realleges, and incorporates herein by reference paragraphs 1 through 53 of this Complaint.

55. The Meat Market's practice of misrepresenting and failing to disclose to consumers the cost and quantity of meat sold by them to consumers, as described in paragraphs 19-50 of this Complaint, constituted a pattern or practice of unfair and deceptive conduct in violation of 5 M.R.S.A. §207, the Maine Unfair Trade Practice Act.

56. The Meat Market's unlawful conduct as described herein was intentional.

COUNT THREE  
(Misrepresentations)

57. Plaintiff repeats, realleges, and incorporates herein by reference paragraphs 1 through 56 of this Complaint.

impressions or promises described in paragraphs 19-50 of this Complaint, constituted conduct in violation of 9-A M.R.S.A. §5-117, the Maine Consumer Credit Code.

65. The Meat Market's unlawful conduct as described herein was in violation of 5 M.R.S.A. §207, the Maine Unfair Trade Practices Act, and was intentional.

COUNT SIX

(Weights and Measures: Misrepresentations)

66. Plaintiff repeats, realleges, and incorporates herein by reference paragraphs 1 through 65 of this Complaint.

67. The Meat Market's conduct, including (but not limited to) that described in paragraphs 19-50 of the Complaint, constituted offering, selling or exposing for sale less than a quantity represented, in violation of 10 M.R.S.A. §2621, Weights and Measures.

68. The Meat Market's unlawful conduct as described herein was intentional.

COUNT SEVEN

(Weights and Measures: Misrepresentations)

69. Plaintiff repeats, realleges, and incorporates herein by reference paragraphs 1 through 68 of this Complaint.

70. The Meat Market's conduct, including (but not limited to) that described in paragraphs 19-50 of this Complaint, constituted misrepresentation of a commodity sold, offered, exposed or advertised for sale, in violation of 10 M.R.S.A.



accompaniment by a delivery ticket containing information regarding name and address of vendor and purchaser, date of delivery, quantity upon which price is based, identity of commodity (including representation of quality), and count of packages, all in violation of 10 M.R.S.A. §2624, Weights and Measures.

77. The Meat Market's unlawful conduct as described herein was in violation of 5 M.R.S.A. §207, the Maine Unfair Trade Practices Act, and was intentional.

COUNT TEN  
(Consumer Credit Code: Failure to Notify)

78. Plaintiff repeats, realleges, and incorporates herein by reference paragraphs 1 through 77 of this Complaint.

79. The Meat Market commenced business on or about March 5, 1993 but failed to file notification pursuant to 9-A M.R.S.A. §6-202 with the State until April 1, 1993.

80. The Meat Market's conduct as described herein was in violation of 5 M.R.S.A. §207, the Maine Unfair Trade Practices Act, and was intentional.

COUNT ELEVEN  
(Illegal Enforcement of Credit Contracts)

81. Plaintiff repeats, realleges, and incorporates herein by reference paragraphs 1 through 80 of this Complaint.

82. Defendants National and Fair have accepted assignment by The Meat Market of numerous finance contracts entered into by The Meat Market with Maine consumer. As assignees of The Meat Market, National and Fair are subject to all

89. By purchasing and enforcing consumer contracts entered into as a result of illegal practices while not being authorized to do business in this State as a foreign corporation, Defendants Fair and National are in violation of 5 M.R.S.A. §207, the Maine Unfair Trade Practices Act.

90. The Defendants conduct as described herein was intentional.

RELIEF REQUESTED

Plaintiff requests entry of the following relief:

1. Declare that Defendant Bearden's conduct as described in this Complaint is in violation of The Unfair Trade Practices Act, The Consumer Credit Code, and The Weights and Measures Laws, and the Foreign Corporations Act.

2. Permanently enjoin Defendant Bearden, his associates, agents, employees, attorneys or any person in active concert or participation with them, from:

A. Advertising meat at a low price for the purpose of attracting customers and subsequently disparaging its quality in order to induce consumers to purchase higher priced meat;

B. Advertising meat for sale in specific quantities without insuring a supply sufficient to meet reasonably expected demand;

C. Advertising "specials", namely the availability of meat in specific quantities and/or at specific prices, and disclaiming the "special" as an example only;

D. Misrepresenting or failing to disclose to consumers the cost of meat sold to consumers;

5. Order Defendant Bearden to pay to the Department of the Attorney General, pursuant to 5 M.R.S.A. § 209, civil penalties in an amount not to exceed \$10,000 for each intentional violation of 5 M.R.S.A. § 207.

6. Order Defendant Bearden to pay to the Department of the Attorney General, pursuant to 9-A M.R.S.A. § 6-113, a civil penalty of \$5,000 for willful and/or repeated violations of the Consumer Credit Code.

7. Order Defendant Bearden to pay to the Department of the Attorney General, pursuant to 9-A M.R.S.A. § 6-204, a penalty of \$5/day for each violation of 9-A M.R.S.A. § 6-202.

8. Preliminarily enjoin Defendants National and Fair from collecting on contracts assigned to them by The Meat Market until a permanent injunction hearing can be held and order these Defendants to place money already collected from The Meat Market customers in a separate escrow account.

9. Declare that Defendants National's and Fair's continued collection and enforcement of illegal The Meat Market contracts is in violation of The Unfair Trade Practices Act, 5 M.R.S.A. §207.

10. Order Defendants National and Fair to pay restitution to each consumer they collected money from and who had been injured by The Meat Market's unfair or deceptive trade practices;

11. Order Defendants to pay to the Department of the Attorney General the costs of suit and investigation, including attorneys' fees;

DATED: 2/3/94

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