

STATE OF MAINE
KENNEBEC, SS.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. CV-

STATE OF MAINE,)	
)	
Plaintiff)	
)	
v.)	CONSENT DECREE
)	
RICH PLAN OF NORTHERN N.E.,)	
INC.,)	
)	
Defendant)	

Plaintiff, the State of Maine, has filed its Complaint in the above-captioned matter on . Plaintiff, by its respective authorized agent, and Defendant 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 an admission by the Defendant 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 has jurisdiction over the party consenting to this Decree. The Complaint states a claim in which may be granted against the Defendant under 5 M.R.S.A. § 207 (1979).

2. The Defendant acknowledges that it received written notice of the intention of the Attorney General to commence an action under 5 M.R.S.A. §§ 206-214 (1979 & Supp. 1982) more than 10 days prior to the filing of the Complaint in this matter.

3. The Defendant, its agents, employees, heirs, assigns, independent contractors, or other persons acting for the Defendant or under its control or guidance are permanently enjoined and restrained from:

- A. Violating 5 M.R.S.A. § 207 (1979) by
misrepresenting the savings, if any, that
consumers will receive by purchasing from the
Defendant frozen foods;
- B. Violating 5 M.R.S.A. § 207 (1979) by failing to
disclose to customers the price per pound and
unit price of each of the items of food sold by
the Defendant.

4. Within 30 days of the date of this Decree, the Defendant shall notify each of its present customers of the price per pound and unit price of each of the food items it sells. At that time, the Defendant shall inform each customer that he or she has the right to rescind any contract with the Defendant for food or services.

5. Within 30 days of the date of this Decree, the Defendant shall present to the Attorney General for its

approval company brochures and salesperson training materials. These training materials shall be reviewed by the Attorney General in order to insure that the Defendant is not misrepresenting the savings, if any, that consumers will realize by purchasing food from the Defendant. If the Attorney General does not approve these materials, the Defendant shall apply to this Court for an order allowing their use.

6. Pursuant to 5 M.R.S.A. § 209 (1979), the Defendant shall pay the Department of the Attorney General the sum of _____, which sum shall represent reimbursement of the costs of this suit and of the investigation of the Defendant made by the Attorney General. This money shall be paid within 30 days of the date of this Consent Decree.

7. Jurisdiction is retained by this Court for the purpose of enabling any other 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, and for the punishment pursuant to 5 M.R.S.A. § 209 (1979) of any violations of such provisions.

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

STATE OF MAINE
KENNEBEC, SS.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. CV-

STATE OF MAINE,)	
)	
Plaintiff)	
)	
v.)	COMPLAINT AND REQUEST FOR A
)	PRELIMINARY AND PERMANENT
RICH PLAN OF NORTHERN N.E.,)	INJUNCTION
INC.,)	
)	
Defendant)	

INTRODUCTION

1. This is an action under the Unfair Trade Practices Act, 5 M.R.S.A. §§ 206-214 (1979 & Supp. 1984) to preliminarily and permanently enjoin the Defendant from using unfair and deceptive acts in the sale of frozen foods for home consumption.

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 (Supp. 1984), 4 M.R.S.A. § 105 (Supp. 1984), Superior Court Jurisdiction and Powers, and 14 M.R.S.A. § 6051 (1980), Equity Proceedings.

3. Venue is placed in Kennebec County, pursuant to 5 M.R.S.A. § 209 (Supp. 1984).

PARTIES

4. Plaintiff, STATE OF MAINE, is a sovereign state and commences this action through its Attorney General, pursuant to

powers vested in him by the common law in 5 M.R.S.A. § 194 (1979) as the State's chief law enforcement officer and also pursuant to 5 M.R.S.A. §§ 206-214 (1979 & Supp. 1984), the Maine Unfair Trade Practices Acts, to protect the public by preventing and restraining the Defendant from practicing unfair and deceptive trade practices.

5. Defendant, RICH PLAN OF NORTHERN N.E., INC. is a business incorporated in New Hampshire. The address of the registered office of the corporation in Maine is Route One (P.O. Box 668), Scarborough, Maine 04074 (Registered Agent: Peter Neelon). The Defendant sells frozen food service with monthly delivery to the home. In addition, the Defendant sells freezer and microwave oven purchase and service plans. The Defendant also has offices in Pittsfield, New Hampshire and Utica, New York.

FACTS

6. The Defendant and its agents are engaged in the sale of frozen food for home consumption. The Defendant's sales are regularly made through unsolicited visits to consumers in their homes.

7. The Defendant's salespersons analyze consumers' monthly food needs and propose a selection of frozen foods for delivery each month.

8. Each month the Defendant delivers to its customers frozen food packages of meats, vegetables, and other items.

9. The Defendant offers to its customers a choice of two different Rich Plan membership agreements. These are referred to as either the "No Service" agreement or the "Full Service" agreement.

10. The No Service agreement provides only the monthly delivery of frozen foods.

11. The Full Service agreement includes the monthly delivery of frozen foods and the following services:

- A. Preventive freezer maintenance;
- B. Freezer repair service;
- C. Freezer lender service if the freezer cannot be made to operate at safe temperatures;
- D. Repurchase of the Defendant's food if the consumer is moving out of the Defendant's service area;
- E. Food spoilage protection if the freezer suffers a mechanical breakdown;
- F. Replacement of unsatisfactory food;
- G. A 20% price reduction on the monthly food order purchased from the Defendant.

12. In 1984, this Full Service agreement was priced at \$599. Pursuant to the terms of this agreement, a consumer cannot revoke (or receive a refund) even if the consumer decides to stop ordering the Defendant's monthly frozen food delivery service.

13. The Defendant's salesperson meets the consumer in his home and selects the different kinds and amounts of frozen foods that will be delivered on a monthly basis.

14. The Defendant does not disclose to its customers either the total price or the unit price of individual food items. Rather, items are assigned certain point values. The value of each point is not revealed to the consumer.

15. Consumers are also provided the opportunity to order "Dollar Saving Specials of the Month". These monthly specials are identified as to price per pound or unit price.

16. The Defendant specifically claims that its frozen foods can be purchased at prices that are the same or lower than the prices the consumer currently pays. For example, in their brochure distributed to the public, the Defendant has adopted the following statement: "Rich Plan Corporation, owned and controlled by its dealers, has had a long and strict policy to offer its customers the finest of frozen foods at savings that make being a member an excellent bargain."

17. The Defendant's salespersons when visiting consumers in their homes both implicitly and explicitly represent that food purchased from the Defendant will be priced at either the same price or less than the same price consumers currently pay when buying such foods in a supermarket.

18. For example, the Defendant's written training materials direct the salespersons to use the following claims

when describing to consumers the benefits of contracting with the Defendant:

- A. That the Rich Plan will provide "as much or more food" for the same amount of money currently being spent by the consumer;
- B. That the Rich Plan will provide "as good or better food" for the same amount of money being spent by the consumer;
- C. "It's like having a supermarket right in your own home";
- D. "You'll enjoy all these fine quality meats at low quantity prices with your Rich Plan home food service";
- E. "As you can see, this (monthly payment) compares very favorably with your present method of buying";
- F. "You will be provided with Periodic Order Forms including wonderful and economic food specials";
- G. "Don't you agree that you will be getting more for your money with Rich Plan";
- H. "Would you be interested in finding out how you can obtain the finest foods delivered right to your home at prices you will enjoy paying";
- I. "The wonderful convenience and potential savings we can provide";
- J. "Dozens of ways to make your food dollar count";

- K. "If you and your husband could find a better place to shop that would have as much food and better food than you are now buying for the same amount of money at the (consumer's supermarket), you would be interested in this, wouldn't you?";
- L. "We try to help your family obtain a better food product and more services than you are getting at the Supermarket without increasing the amount you are spending at the store right now".
- M. "Well, Rich Plan supplies the average American family with top quality foods. Depending on what your food budget is, we normally can do this and supply you with a freezer if you need one for about what you're spending for food right now in the grocery store."

19. The Defendant's frozen foods are sold to consumers at a cost significantly above the cost to the consumer were these items purchased at a local supermarket. For example, in February 1984, the following price differences existed:

APPROXIMATE PERCENTAGE BY WHICH RICH PLAN PRICES
EXCEEDED PRICES CHARGED BY HANNAFORD BROS. SUPERMARKETS
IN THE PORTLAND AREA IN FEBRUARY 1984

<u>Rich Plan Item</u>	<u>Approximately More Expensive Than Supermarket Price</u>
Strip Sirloin Steak	150% more expensive
T-Bone Steak	145% more expensive
Sandwich Steak	130% more expensive
Sirloin Tip Roast	105% more expensive

Link Sausage	115% more expensive
Chicken Fryers (cut up)	45% more expensive
Orange Juice (12 ozs.)	95% more expensive
Chopped Spinach (10 ozs.)	120% more expensive
Stew Vegetables (20 ozs.)	125% more expensive
Sliced Strawberries (16 ozs.)	90% more expensive

20. The Defendant also offers its customers monthly "dollar saving" specials. A significant number of these items cost significantly more than they would cost in a supermarket. For example, for the month of February 1984, the following difference in prices existed:

UNIT PRICES (PER POUND) - FEBRUARY 1984

<u>\$ Saving Product</u>	<u>Rich Plan Price</u>	<u>Hannaford Bros. Supermarket Prices in Portland</u>
Beef Filet of Sirloin	\$ 4.73	\$ 3.48
Beef Tenderloin Steak	\$ 8.73	\$ 5.69
Sandwich Steak	\$ 4.17	\$ 3.18
Veal Slices (Cutlets)	\$ 7.53	\$ 5.49

FIRST CAUSE OF ACTION

Failure to State a Material Fact

21. Plaintiff realleges and incorporates herein by reference paragraphs 1 through 20.

22. Defendant's failure to state the price per pound or unit price of its food items is a failure to disclose a material fact.

23. The Defendant's conduct described in this Second Cause of Action is an unfair and deceptive trade practice in violation of 5 M.R.S.A. § 207 (1979).

24. Consumers have suffered financial loss as a result of Defendant's deceptive trade practice.

SECOND CAUSE OF ACTION
(DECEPTIVE SALES PRACTICES)

25. Plaintiff realleges and incorporates herein by reference paragraphs 1 through 24.

26. The Defendant's sales presentation falsely and deceptively represents that consumers will be purchasing the Defendant's food at the same or lower prices than they are currently paying.

27. The Defendant's conduct is an unfair and deceptive trade practice and is in violation of 5 M.R.S.A. § 207 (1979).

28. Consumers have suffered financial loss to the Defendant's misrepresentations as to the prices of its foods.

RELIEF REQUESTED

WHEREFORE, the Plaintiff respectfully requests that this Court:

1. Declare that the Defendant is engaging in unfair and deceptive trade practices in violation of 5 M.R.S.A. § 207 (1979).

2. Issue a preliminary and permanent injunction pursuant to 5 M.R.S.A. § 209 (Supp. 1984) enjoining the Defendant, its agents, employees, assigns, or other persons acting for the Defendant or under its control from implicitly or explicitly misrepresenting the savings, if any, consumers will realize by purchasing frozen foods from the Defendant.

3. Order the Defendant to disclose to each of its current

customers the price per pound or unit price for each of its food items.

4. Order the Defendant to offer each current customer the right to rescind any food or service contract with the Defendant.

5. Order restitution for the Defendant's customers who have suffered financial loss due to the unfair and deceptive trade practices of the Defendant.

6. Order the Defendant to pay the costs of this suit and of the investigation of the Defendant made by the Attorney General.

7. Grant such other relief as this Court deems just and proper.

Date:

Respectully submitted,

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By:

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