

STATE OF MAINE
KENNEBEC, ss

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. CV-06-

STATE OF MAINE,)	
)	
Plaintiff)	
)	
v.)	COMPLAINT
)	(Injunctive Relief Requested)
)	
STEPHEN SPAULDING,)	
d/b/a E & E AUTO SERVICES,)	
)	
Defendant)	

INTRODUCTION

1. The State of Maine brings this action under the Maine Unfair Trade Practices Act, 5 M.R.S.A. §§ 205-A – 214 (“UTPA”). The Plaintiff seeks to permanently enjoin the Defendant, Stephen Spaulding, d/b/a E & E Auto Services, from engaging in unfair and deceptive practices in the sale of used automobile parts and equipment and to compel the Defendant to pay restitution, civil penalties, costs of investigation and suit, and attorneys’ fees.

PARTIES

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

3. The Defendant Stephen Spaulding is a person doing business as E & E Auto Service with a business address of 689 Gardiner Road, Wiscasset, Maine.

JURISDICTION AND VENUE

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

STATUTORY BACKGROUND

5. Pursuant to 5 M.R.S.A. § 207, “[u]nfair or deceptive acts or practices in the conduct of any trade or business are unlawful.”

6. Pursuant to 5 M.R.S.A. § 209, whenever the Attorney General has reason to believe that an unlawful trade practice is being committed or is about to be committed the Attorney General may bring an action in the name of the State of Maine against such person to restrain by temporary or permanent injunction the act or practice and the court may make such other orders and 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 trade practices any moneys or property which may have been acquired by means of such method, acts or practice.

7. The Defendant Stephen Spaulding, d/b/a E & E Auto Service, was at all times relevant engaged in trade and commerce in the State of Maine through advertising, promoting, offering for sale, and selling automobile parts and equipment.

8. Since at least November 2004, the Defendant has used internet websites such as www.partsrequest.com and www.getusedparts.com to locate and solicit persons interested in purchasing used automobile parts or equipment.

9. Websites such as www.partsrequest.com and www.getusedparts.com allow a prospective buyer to submit an online form describing the item that he/she is seeking to purchase. Businesses subscribing to these online websites receive the

prospective buyer's information and are then able to contact the prospective buyer directly to solicit a sale.

10. Based upon information that the Defendant placed on or received from the internet, the Defendant has solicited at least eighteen (18) persons to purchase items from his business.

11. In each case, the Defendant represented that he had the particular item that the prospective buyer was seeking to purchase in his possession and available to deliver upon receipt of payment.

12. In each case, the Defendant quoted a specific price for the item which included shipping.

13. In most cases, the Defendant represented that the item carried a ninety (90) day warranty.

14. In several cases, the Defendant expressly described an item's condition as "good", "great", or "excellent."

15. The Defendant represented to prospective buyers that he would ship the particular item as soon as payment was received and would confirm his receipt of payment as well as the date of shipping by e-mail.

16. The Defendant provided prospective buyers contact information including the Defendant's business address and telephone number.

17. Based upon the Defendant's representations, and acting reasonably under the circumstances, at least eighteen (18) persons agreed to purchase items from the Defendant and tendered payment in the amount of the price quoted by the Defendant.

18. For example, among the items that the Defendant offered to sell, and for which he received payment, were an engine for a 1997 Saturn SL2, a Plymouth Grand-Voyager transmission, a 1990 Ford Ranger engine, a Subaru Legacy AWD transmission, a 1994 Ford Escort seat belt motor, a 1985 Subaru engine, a 1997 Saturn SL2 engine, a Modis Scanner, a transmission for a 1992 Saab Convertible, and a compressor and clutch for a 1994 Chrysler New Yorker.

19. In all of the above described eighteen (18) cases, the Defendant failed to make prompt delivery of the item as promised.

20. In all of the above eighteen (18) cases, the Defendant failed to initiate further contact after receiving payment for an item, forcing the purchasers to make contact with the Defendant to inquire about their orders.

21. In all of the above eighteen (18) cases, the Defendant became difficult to reach at the address and telephone number that he had provided and ignored or was slow to respond to e-mail inquiries.

22. When and if a purchaser did reach the Defendant or his agent to inquire about his/her order, the Defendant and/or his agent gave false or misleading reasons regarding the Defendant's failure to deliver the item as promised and made additional false promises regarding the action that the Defendant intended to take to remedy the problem.

23. At least fourteen (14) of the eighteen (18) purchasers have never received anything from the Defendant in return for their payments.

24. In four (4) of the eighteen (18) cases described above, individuals received either some item or a refund but only after months of persistently pursuing the Defendant with inquires and threats of legal action.

25. The Plaintiff has reason to believe that the Defendant is continuing to engage in the unfair and deceptive acts and practices described above.

COUNT 1
(Unfair and Deceptive Trade Practices)

26. Plaintiff repeats, realleges, and incorporates herein by reference the preceding paragraphs in this complaint.

27. The Defendant engaged in unfair and deceptive practices by making intentional misrepresentations about his ability or intent to deliver the items which he was purportedly selling; by accepting payments for items knowing that he would not or could not deliver them as promised; by attempting to avoid further contact with purchasers after receiving their money; by making additional false and misleading statements in response to legitimate inquiries from purchasers about their orders; and by failing to provide either the item as described by the Defendant or a refund of the purchase price.

28. The Defendant's actions violate the Unfair Trade Practices Act.

29. The Defendant's conduct as described herein is intentional.

RELIEF REQUESTED

The Plaintiff requests that this Court enter an order;

1. Declaring that the conduct of the Defendant is in violation of the Unfair Trade Practices Act;

2. Permanently enjoin Stephen Spaulding, his associates, agents, employees, attorneys or any person in active concert or participation with him who have actual notice

of the injunction from taking advance deposits or payments for any product or services that he is selling and from soliciting sales via the internet;

3. Order Stephen Spaulding to submit an accounting of all moneys that he, individually or doing business as, E & E Auto Service has collected from person known to him as a result of the internet since January 2004 to the present;

4. Order the Defendant to pay restitution to all persons who were subjected to any of the Defendant's unlawful practices as described in this complaint;

5. Order the Defendant to pay to the Office of the Attorney General the cost of its investigation, suit, and attorneys' fees;


6. Order the Defendant to pay to the Office of the Attorney General civil penalties in an amount not to exceed \$10,000 for each intentional violation of the Unfair Trade Practices Act; and

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

Respectfully submitted

G. STEPHEN ROWE
ATTORNEY GENERAL

Dated: March 13, 2006


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