

STATE OF MAINE
KENNEBEC, SS.

5-26-78
SUPERIOR COURT
CIVIL ACTION
DOCKET NO. 78-313

STATE OF MAINE,)
Plaintiff)
V.)
HOWARD JOHNSON COMPANY,)
Defendant)

COMPLAINT

The State of Maine by and through its Attorney General
Joseph E. Brennan, hereby alleges the following:

JURISDICTION

1. This action is based in part upon two contracts made between the Maine Turnpike Authority and the defendant, Howard Johnson Company, in the State of Maine for the benefit of the users of the Maine Turnpike regarding the preparation, sale and service of food and merchandise in Maine at certain specified locations on the Maine Turnpike. One contract was made on June 3, 1971, modified on September 12, 1972 and March 8, 1976 and is effective until December 13, 1983. The other was made on November 8, 1956, modified on February 15, 1967, and March 8, 1976, and is effective until December 31, 1985.

2. This action is based in part under Title 5 M.R.S.A. § 206, et seq., known as the Unfair Trade Practices Act.

Jurisdiction arises under 5 M.R.S.A. § 209. Notice as required by that section has been received or waived by the defendant.

PLAINTIFF

3. Joseph E. Brennan, as Attorney General for the State of Maine, brings this action on behalf of the State and its citizens pursuant to Title 5 M.R.S.A. § 209.

DEFENDANT

4. Defendant, Howard Johnson Company is a Maryland Corporation licensed to do business in the State of Maine, with principal offices at 1 Howard Johnson Plaza, Boston, Massachusetts. Defendant engages in the preparation, sale and service of food and merchandise in York, Cumberland, Androsgoggin and Kennebec Counties as well as other counties in the State of Maine.

MAINE TURNPIKE

5. The Maine Turnpike is a limited access highway between York, Maine and Augusta, Maine. Users of the Maine Turnpike pay tolls to use the highway. Users who require service such as food or gasoline while traveling the turnpike must make their purchases from the vendors permitted by the Maine Turnpike Authority to operate at certain locations on the turnpike or leave the turnpike to make such purchases, passing through a toll gate to exit and to reenter. It is inconvenient for users to leave the turnpike

to make purchases.

CONTRACTS

6. On or about June 3, 1971, the defendant entered into a contract with the Maine Turnpike Authority pertaining to the lease of buildings at Mile 24 of the Maine Turnpike. The contract was modified on September 12, 1972 and March 8, 1976. It continues in effect to December 13, 1983. The contract pertains to the lease of turnpike facilities to the defendant and to the preparation, sale and service of food and merchandise by the defendant to patrons of the Maine Turnpike. The contract is attached to and hereby incorporated into this Complaint, marked as "Attachment A".

7. On or about November 8, 1956, the defendant entered into a contract with the Maine Turnpike Authority pertaining to the lease of buildings at Mile 56, Mile 57, Mile 81, and Mile 95 of the Maine Turnpike. The contract was modified on February 16, 1967 and March 8, 1976. It continues in effect to December 31, 1985. The contract pertains to the lease of turnpike facilities to the defendant and the preparation and sale and service of food and merchandise by the defendant to patrons of the Maine Turnpike. The contract is attached to and hereby incorporated into this Complaint, marked as "Attachment B".

COUNT I

CONTRACT ALLEGATIONS

8. The defendant is the sole and exclusive vendor of food,

merchandise and related services on the Maine Turnpike (other than those related to the servicing of motor vehicles) as a result of the contracts described in Paragraphs 6 and 7 of this Complaint.

9. The contracts were entered into by both parties for the purpose of benefiting members of the public who use the Maine Turnpike.

10. All users of the Maine Turnpike are third party beneficiaries to said described contracts.

11. The defendant agreed in Paragraph 10 of each of the described contracts that

"the range of prices to be charged by it for food, merchandise and services rendered shall be reasonably suited to the traveling public at large and shall be in keeping with the prices charged for comparable food, merchandise and service sold in areas in the general vicinity of the turnpike."

12. The purpose of Paragraph 10 of each of the described contracts is to insure that food, merchandise and service sold on the Maine Turnpike is priced competitively with comparable food and merchandise sold in areas in the general vicinity of the turnpike and to protect public users of the turnpike from being charged high and uncompetitive prices, that might otherwise occur because the defendant is the only vendor of food, service

and merchandise on the turnpike.

13. The defendant is obligated by Paragraph 10 of each of the described contracts to engage in a regular periodic review of prices being charged for comparable food, merchandise and service sold in areas in the general vicinity of the turnpike.

14. The defendant has breached the described two contracts by failing to fulfill its obligation to engage in a regular periodic review of prices charged for comparable food, merchandise and service sold in areas in the general vicinity of the turnpike.

15. The defendant has breached the described two contracts by failing to charge a range of prices for food, merchandise and service reasonably suited to the traveling public at large.

16. The defendant has breached the described two contracts by failing to charge a range of prices for food, merchandise and service in keeping with the prices charged for comparable food, merchandise and service sold in areas in the general vicinity of the turnpike.

17. The defendant has breached the described two contracts by charging prices for food, merchandise and service at each of its described locations on the Maine Turnpike that are substantial higher than those prices charged for comparable food and merchandise in areas in the general vicinity of the turnpike.

18. The described breach by the defendant has caused damage to the public users, third party beneficiaries, in an amount yet

to be determined, by causing them to pay higher prices for food and merchandise on the turnpike than they would otherwise have to pay if the defendant had abided by Paragraph 10 of each of the described two contracts.

COUNT II

UNFAIR METHOD OF COMPETITION

19. Plaintiff repeats the allegations made in Paragraphs 5 through 7 of this Complaint.

20. The defendant obtained the right to be the exclusive and sole vendor of food, merchandise and service on the Maine Turnpike by making certain promises to the Maine Turnpike Authority which promises were incorporated into and became the two contracts described in the Complaint, including the promise regarding prices contained in Paragraph 10 of each of the two contracts.

¹ 21. The defendant has engaged in an unfair method of competition as to all other vendors who did bid or might have bid for the right to sell food and merchandise on the Maine Turnpike by failing to abide by its promise regarding prices as contained in Paragraph 10 of each of the two described contracts after utilizing that promise to obtain the exclusive right to do business on the turnpike.

¹ 22. The activity described in Paragraphs 20 and 21 of this Complaint constitutes an unfair method of competition in violation

of Title 5 M.R.S.A. § 207.

23. The defendant has unlawfully acquired money in an amount yet to be determined by engaging in the unfair method of competition described in Paragraphs 20 and 21 of this Complaint

COUNT III

UNFAIR TRADE PRACTICE

24. Plaintiff repeats the allegations made in Paragraphs 5 through 18 of this Complaint.

25. The defendant has engaged in an unfair trade practice in violation of Title 5 M.R.S.A. § 207 by failing to fulfill its obligations under Paragraph 10 of each of the two described contracts.

26. The defendant has unlawfully acquired money in an amount yet to be determined by engaging in the unfair trade practice described in Paragraphs 24 and 25 of this Complaint.

COUNT IV

ABUSE OF MONOPOLY POWER

27. Plaintiff repeats the allegations made in Paragraphs 5 through 7 of this Complaint.

28. The defendant possesses a public monopoly for the sale of food, merchandise and service (other than those related to the servicing of motor vehicles) on the Maine Turnpike.

29. The defendant has abused its public monopoly by charging unreasonable, excessive and uncompetitive prices for the food and merchandise it sells to users of the Maine Turnpike.

30. The defendant has acquired money to which it is not and was not entitled from users of the Maine Turnpike by abusing its public monopoly as described in Paragraph 29 of this Complaint.

31. The activity described in Paragraphs 27 through 30 of this Complaint constitutes a violation of Title 5 M.R.S.A. § 20

REQUEST FOR RELIEF

WHEREFORE, the plaintiff hereby requests the court to:

1. Find the defendant in breach of Paragraph 10 of each of the two described contracts.

2. Find the defendant to have engaged in an unfair method of competition in violation of 5 M.R.S.A. § 207.

3. Find the defendant to have engaged in an unfair trade practice in violation of 5 M.R.S.A. § 207.

4. Enter a permanent injunction requiring the defendant to engage in a regular periodic review of prices being charged for food, merchandise and service in areas in the general vicinity of the turnpike.

5. Enter a permanent injunction requiring the defendant to charge prices for food, merchandise and service on the Maine Turnpike which are reasonably suited to the traveling public.

6. Enter a permanent injunction prohibiting the defendant from charging prices for food and merchandise on the Maine Turnpike higher than those charged for comparable food and merchandise in areas in the general vicinity of the turnpike.

7. Enter an order requiring the defendant to make restitution to the plaintiff on behalf of all consumers harmed in a sum equal to the amount acquired by the defendant for food and merchandise on the Maine Turnpike in excess of prices reasonable suited to the traveling public at large.

8. Enter an order requiring the defendant to make restitution to the plaintiff on behalf of all consumers harmed in a sum equal to the amount acquired by the defendant for food and merchandise on the Maine Turnpike in excess of those prices charged for comparable food and merchandise in the general vicinity of the turnpike during the years commencing May 26, 1972, to this date, said restitution to be held in trust by the court and distributed for the benefit and use of users of the Maine Turnpike.

9. Enter an order requiring the defendant to pay the costs of the investigation made by the Attorney General into the acts and practices alleged in this complaint.

10. Enter an order for such other legal and equitable relief as the court deems just and necessary.

Dated: May 26, 1978

JOSEPH E. BRENNAN
Attorney General

CHERYL HARRINGTON
Assistant Attorney General

STEPHEN WESSLER
Assistant Attorney General

STATE OF MAINE
KENNEBEC, SS.

3/21/79
P.M. 2-30
3/10/79
SUPERIOR COURT
CIVIL ACTION
Docket No. 78-313

STATE OF MAINE,

Plaintiff

v.

HOWARD JOHNSON COMPANY,
Defendant

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CONSENT DECREE

Plaintiff, State of Maine, having filed its Complaint herein, alleging that its action was based in part on Title 5 M.R.S.A. §206 et seq., and Defendant, Howard Johnson Company, having appeared by its counsel and having filed its Answer thereto denying the material allegations of the Complaint, and denying that the State has any cause of action based on Title 5 M.R.S.A. §206 et seq., and both parties by their respective attorneys having consented to the making and entry of this Consent Decree without admission by any party in respect to any issue or any fact and without this Consent Decree constituting any evidence or admission by any party hereto with respect to any issue or any fact, in this or any other action involving the Defendant;

NOW, THEREFORE, before any testimony has been taken herein, without trial or adjudication of any issue or fact or law herein, and upon consent of the parties hereto, it is hereby

ORDERED, ADJUDGED AND DECREED, as follows:

I

This Court has jurisdiction over the subject matter of this action and of the parties hereto.

FILED
MAR 21 1979
P. VALERIE PAGE
✓c

II

As used in this Consent Decree:

A. "Defendant" means Howard Johnson Company;

B. "Person" means any individual, partnership, corporation, association, firm or any other legal entity;

C. "Contract I" means the agreement entitled "Lease of Restaurants" entered into between the Defendant and the Maine Turnpike Authority on June 3, 1971, modified on September 12, 1972 and further modified on March 8, 1976, concerning the lease of premises and the provision of food and services at two (2) locations at Mile 24 of the Maine Turnpike.

D. "Contract II" means the agreement entitled "Lease of Restaurants" entered into between the Defendant and the Maine Turnpike Authority on November 8, 1956, modified on February 16, 1957 and further modified on March 8, 1976, concerning the lease of premises and the provision of food^{and} services at Mile 56, Mile 57, Mile 81 and Mile 95 of the Maine Turnpike.

E. "Index" means the National Consumer Price Index for (Unadjusted) Food Eaten Away from Home - All Urban Consumers/which is currently published monthly by the Bureau of Labor Statistics, United States Department of Commerce, or any successor index.

F. "June 1978 Maine Turnpike Menu" means the Defendant's menu in effect at the Maine Turnpike Restaurants as of June of 1978.

G.. "Maine Turnpike Restaurants" means the restaurants presently leased to the Defendant by the Maine Turnpike Authority pursuant to Contracts I and II.

III.

The provisions of this Consent Decree shall apply to the Defendant and to each of its officers, directors, agents, franchisees employees, successors and assigns and to all other persons in active concert or participation with any of them who receive actual notice of this Consent Decree by personal service or otherwise.

IV

A. During the remainder of the present terms of Contracts I and II, the Defendant shall offer at the Maine Turnpike Restaurants two (2) meals which shall include protein, carbohydrate and fat, and which shall be accompanied by a beverage. These meals may be combinations of individual items which presently are, or in the future may be, listed on the Maine Turnpike Menus. These meals shall be made known to customers of the Maine Turnpike Restaurants in a reasonably attractive manner in accordance with the normal methods of each such Restaurant. The initial price at which these meals shall be offered shall be less than Two Dollars (\$2.00). The initial price shall be subject to adjustment in accordance with the provisions of Paragraph IV-C below.

B. During the remainder of the present term of Contracts I and II, the Defendant shall offer at the Maine Turnpike Restaurants three (3) sandwiches at an initial price of Ninety Cents (\$.90). The initial price shall be subject to adjustment in accordance with the provisions of Paragraph IV-C. One (1) of the three (3) sandwiches shall be a 7:1 hamburger (7 hamburgers prepared from one pound of uncooked hamburger). The three (3) sandwiches shall be available for take-out at the Maine Turnpike Restaurants for Five Cents (\$.05) less than the regular price but, in accordance with the Defendant's practice, shall be offered for take-out without garnish.

C. During the remainder of the present term of Contracts I and II, price increases for items on the June 1978 Maine Turnpike Menu shall be subject to the following:

The aggregate menu price may be increased at any time so long as the increase from the aggregate menu price of the June 1978 Maine Turnpike Menu to the new aggregate menu price, expressed as a percentage, does not exceed the increase reflected by the Index, expressed as a percentage, between June of 1978 and the effective date of the new aggregate menu price.

The "aggregate menu price of the June 1978 Maine Turnpike Menu" shall be computed by adding the price for one of each item listed on the June 1978 Maine Turnpike Menu. Excluded from this computation shall be any items with a price of Four Dollars (\$4.00) or more. The Defendant shall be free to adjust the price

of the excluded items as it sees fit, and such excluded items shall not thereafter be included in the computation of a new aggregate menu price.

The "new aggregate menu price" shall be computed by adding the price for one of each item listed on that menu. Excluded from this computation shall be any items with a price higher than the sum of Four Dollars (\$4.00) plus an amount equal to Four Dollars (\$4.00) times the increase reflected by the Index, expressed as a percentage, between June of 1978 and the effective date of new aggregate menu price. The Defendant shall be free to adjust the price of the excluded items as it sees fit, and such excluded items shall not thereafter be included in the computation of a new aggregate menu price.

At no time during the remainder of the present term of Contracts I and II will the price of any item listed on the Defendant's Maine Turnpike Menu exceed the price at which that item is offered by the Defendant at other restaurants owned and operated by it in the State of Maine which are not located on the Turnpike.

The 7:1 hamburger referred to above shall be included in the aggregate menu price and shall be subject to the pricing formula set forth herein. The two (2) meals and the two (2) other sandwiches referred to above shall be excluded from the aggregate menu price, and the prices thereof may be increased by no more than the actual percentage increase in the Index. Should the application of the percentage increase in the Index

to the base price of these items result in a new price that ends in a 3 or 4 or 8 or 9, the Defendant may round the price to the next higher number divisible by 5.

D. During the remainder of the present term of Contracts I and II, any items not offered by the Defendant at the Maine Turnpike Restaurants in June of 1978, if subsequently offered at such Restaurants, initially shall be offered at a price no greater than that at which the items are then being offered by the Defendant at other restaurants owned and operated by it in the State of Maine and not located on the Turnpike. Thereafter, the price of new items which have an initial price of less than the sum of Four Dollars (\$4.00) plus an amount equal to Four Dollars (\$4.00) times the increase reflected by the Index, expressed as a percentage, between June of 1978 and the date on which such new items are offered at the Maine Turnpike Restaurants, may be adjusted in accordance with the provisions of Paragraph IV-C. However, both the aggregate menu price of the June 1978 Maine Turnpike Menu and any new aggregate menu price shall be increased by adding thereto the total of the initial price of any such new items. The Defendant shall be free to adjust the price of all other new items as it sees fit, and such other new items shall not thereafter be included in the computation of a new aggregate menu price.

E. The provisions of Paragraph IV of this Consent Decree shall apply only for the remainder of the present term of Contracts I and II.

V

Defendant shall not directly or indirectly charge prices for merchandise sold or offered for sale at the Maine Turnpike Restaurants which exceed the prices permitted to be charged by the Defendant under Paragraph 10 of Contract I and Contract II, respectively.

VI

Should the Defendant at any time be subjected to mandatory price controls on food, merchandise and/or services imposed by the United States, by legislative or judicial action of the State of Maine or by action of the Governor of the State of Maine, such controls shall supersede and wholly pre-empt the pricing formula set forth in this Consent Decree and such formula shall not be effective for the duration of such price controls. Should such price controls thereafter be terminated in their entirety, the price forumula set forth in this Consent Decree shall again become effective.

VII

A. Information provided by Defendant to Plaintiff relating to all matters alleged in the Complaint and Consent Decree filed in this case is hereby declared to be condifential. Plaintiff shall not disclose such information to any person except in the course of legal proceedings to which both the Defendant and Plaintiff are parties.

B. Information gathered by Plaintiff during its investigation of the matters alleged in its complaint shall be treated as confidential pursuant to 5 M.R.S.A. § 200-D.

VIII

Nothing contained in this Consent Decree shall prohibit or be construed to prohibit the parties to Contract I and Contract II, namely, the Maine Turnpike Authority and the Defendant, from altering and amending any and all provisions of said Contracts, or either of them, including the provisions under Paragraph 10 of said Contracts relating to prices permitted to be charged by the Defendant.

IX

This Court shall maintain continuing jurisdiction over this Consent Decree. The Defendant may be granted further relief in respect to price increases only upon a showing of necessity brought about by unique events not otherwise reflected within this Decree.

X

The provisions of this Consent Decree shall apply only to the Defendant's operation of the Maine Turnpike Restaurants.

XI

Defendant agrees to pay to the Plaintiff the sum of \$20,000.00 within 30 days of the date of this Consent Decree in settlement of claims made by Plaintiff regarding the sale of non-food merchandise at the Maine Turnpike Restaurants.

XII

Defendant is ordered and directed to pay to the Office of the Attorney General, within 30 days of receipt by Defendant of an itemized Statement from the Attorney General setting forth the costs of the investigation by the Attorney

General and the cost of this suit, the amount of, said costs, which amount shall not exceed \$8,000.00.

Date: March 24, 1979

James H. Smith
Justice of the Superior Court

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

Of Counsel:
Pierce, Atwood, Scribner,
Allen, Smith & Lancaster
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Portland, Maine 04101

For Defendant Howard Johnson Company:

Richard S. Page, Esquire

David C. Scribner Jr.

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For Plaintiff State of Maine:

Meryl Harrington

Stephen L. Wessell

Consumer & Antitrust Division
Department of Attorney General
State of Maine
Room 505
State Office Building
Augusta, Maine 04333

A TRUE COPY,

ATTEST

Valerie Page
P. VALERIE PAGE

REC'D AND FILED
MAR 21 1979
P. VALERIE PAGE