

STATE OF MAINE  
KENNEBEC, SS.

SUPERIOR COURT  
CIVIL ACTION  
DOCKET NO. CV-

STATE OF MAINE, )  
 )  
 Plaintiff )  
 )  
 v. )  
 )  
 HORIZON E-YELLOW )  
 PAGES, INC., )  
 )  
 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 5 M.R.S.A. § 209 to enjoin the Defendant from engaging in unfair and deceptive trade practices in connection with its telephone solicitations of Maine businesses in order to sell them a listing in a business directory, in violation of the Maine Unfair Trade Practices Act, 5 M.R.S.A., § 207 (UTPA). The State also seeks 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 in the powers vested in him by common law.

3. Defendant Horizon E-Yellow Pages, Inc. (hereinafter referred to as "Horizon") claims to be a corporation with a Michigan address of 6930 Metroplex Drive, Romulus, Michigan 48174.

## **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, the Maine Unfair Trade Practices Act.

5. Pursuant to 5 M.R.S.A. § 209, the Maine Unfair Trade Practices Act, this action is brought in Superior Court for Kennebec County.

## **STATUTORY BACKGROUND**

6. Pursuant to 5 M.R.S.A. § 207, the Maine UTPA, unfair or deceptive acts or practices in trade or commerce are unlawful.

7. Pursuant to 5 M.R.S.A. § 209, the Maine UTPA, whenever the Attorney General has reason to believe that any person is using or is about to use any method, act or practice declared by 5 M.R.S.A. § 207 to be unlawful, the Attorney General may bring an action against this person to restrain by temporary or permanent injunction the use of unfair and deceptive trade practices, and to order the return of any illegally obtained money or property.

8. Pursuant to 10 M.R.S.A. § 1212 it is a deceptive sales practice when a seller “passes off goods or services as those of another.”

9. Pursuant to the Maine Consumer Solicitation Sales Act, 32 M.R.S.A. §§ 4661-4671, it is a violation of the UTPA to initiate a telephone sales with a Maine buyer and to then not use a written contract that must be signed by the customer and specifically allows the consumer three days to cancel the contract.

10. Pursuant to Maine Consumer Solicitation Sales Act, 32 M.R.S.A. § 4671, it is a violation of the UTPA for a seller to make a solicitation that misrepresents a material fact or creates a false impression.

11. Pursuant to the Maine Transient Sales Act, 32 M.R.S.A. §§ 14701-14716, it is a violation of the UTPA to make a telephone solicitation to a Maine consumer if the seller does not have a permanent place of business in the State of Maine and is not registered with the Department of Professional & Financial Regulation.

12. Pursuant to 10 M.R.S.A. § 1211, it is a deceptive trade practice for a business to cause confusion as to the identify of the service or product being offered.

### **FACTS**

13. Horizon conducts telephone solicitations of Maine businesses for the purpose of the selling the business a listing in its "Horizon E-Yellow Pages." Horizon describes these "yellow pages" as "our digital business-to-business directory."

14. Horizon finalizes its sale of this service over the phone and does not use a written contract that the customer must sign.

15. Horizon conducts its telemarketing from a site outside of Maine and does not have a permanent place of business in Maine and is not registered as a Transient Seller with the Department of Professional and Financial Regulation.

16. The Horizon caller asks the Maine business to renew its listing in the Horizon E-Yellow Pages, even though the business had no previous listing in this directory.

17. Further, the Horizon caller pronounces the name of "Horizon" in such a way that it sounds to the business as if "Verizon" were calling.

18. When a business does have a listing in the Verizon yellow pages, it is led

to believe that they are agreeing to renew a Verizon listing. If a business then agrees to this Horizon sales presentation, the business is billed \$399.95 for a listing in the Horizon E-Yellow Pages. See Attachment A to this Complaint.

19. When the business discovers that it has been deceived by Horizon and refuses to pay Horizon, Horizon then begins an aggressive debt collection effort.

**COUNT ONE**  
**(Violation of Unfair Fair Trade Practices Act - - Illegal Phone Solicitation)**

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

21. Horizon's telephone sales to Maine businesses are in violation of the Consumer Solicitation Sales Act.

22. Pursuant to 32 M.R.S.A. § 4670, violation of the Consumer Solicitation Sales Act is a *per se* violation of the Maine Unfair Trade Practices Act.

23. The Defendant's violation of 5 M.R.S.A. § 207 as described in this Count is intentional.

**COUNT TWO**  
**(Violation of the Maine Unfair Trade Practices Act - - Illegal Transient Sale)**

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

25. Horizon is a Transient Seller who has failed to register with the Department of Professional and Financial Regulation, Office of Licensing and Registration, and therefore is in violation of the Maine Transient Sales Act, 32 M.R.S.A. §§ 14701-14716.

26. Pursuant to 32 M.R.S.A. § 14713, violation of the Transient Sales Act is a *per se* violation of the Maine Unfair Trade Practices Act, 5 M.R.S.A. § 207.

27. The Defendant's violation of 5 M.R.S.A. § 207 as described in this Count

is intentional.

**COUNT THREE**  
**(Violation of Maine Unfair Trade Practices Act - - Deceptive Sales Practices)**

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

29. Horizon's telephone solicitations created a false impression when it leads businesses to believe that it is Verizon calling and not Horizon.

30. Horizon's telephone solicitations misrepresent to businesses that Horizon is calling to renew a business directory listing, when in fact the business had not in the past contracted with Horizon for any listing.

31. Pursuant to 10 M.R.S.A. § 1212 and 32 M.R.S.A. § 4671 and 10 M.R.S.A. § 1212, a consumer solicitation sales presentation based on misrepresentations or the creation of false impressions is a *per se* violation of the Maine Unfair Trade Practices Act.

**RELIEF REQUESTED**

Plaintiff requests the following relief:

1. Declare that the conduct of the Defendant as described in this Complaint violates 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 agents, servants, employees, and those persons acting in concert or participation, from conducting any telephone solicitation:

A. Which fails to use a written contract as required by the Consumer Solicitation Sales Act, 32 M.R.S.A. §§ 4661-4671;

- B. Which is made without being registered as a Transient Seller as required by the Transient Sales Act, 32 M.R.S.A. §§ 14701-14716;
- C. Which uses deceptive sales practices, including misrepresentations or the creation of false impression, in violation of 32 M.R.S.A. § 4671; or
- D. Which attempts to collect a debt that was the result of an unfair and deceptive telephone solicitation.

3. Pursuant to 5 M.R.S.A. § 209, order the Defendant to pay the Office of the Attorney General a Civil Penalty for each intentional violation of the Maine Unfair Trade Practices Act.

4. Pursuant to 5 M.R.S.A. § 209, order the Defendant to make refunds in full to consumers who paid the Defendant as the result of an unfair and deceptive telephone solicitation.

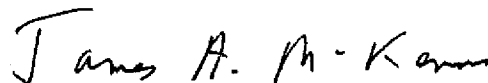
5. Pursuant to 14 M.R.S.A. § 1522, order the Defendant to pay the State's costs of litigation, including attorney fees.

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

Dated: 4/29/04

Respectfully submitted,

G. STEVEN ROWE  
Attorney General



James A. McKenna  
Assistant Attorney General  
#6 State House Station  
Augusta, Maine 04333  
Maine Bar No. 1735  
(207) 626-8842  
Email: [jim.mckenna@maine.gov](mailto:jim.mckenna@maine.gov)

STATE OF MAINE  
KENNEBEC, SS.

SUPERIOR COURT  
CIVIL ACTION  
DOCKET NO. CV-04-120

STATE OF MAINE, )  
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 Plaintiff )  
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 v. )  
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 HORIZON E-YELLOW )  
 PAGES, INC., )  
 )  
 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 5/25/04. The State of Maine and Defendant Horizon E-Yellow Pages, Inc., have consented to the entry of this Consent Decree.

NOW, THEREFORE, 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 consent to this Decree. The Complaint states civil claims which may be granted against the Defendant pursuant to the Maine Unfair Trade Practices Act (UTPA), 5 M.R.S.A. §§ 206-214, the Maine Consumer Solicitation Sales Act, 32 M.R.S.A. §§ 4661-4671, and the Maine Transient Sales Act, 32 M.R.S.A. §§ 14701-14716.

2. The Defendant, its agents, employees, assigns, or other persons acting for the Defendant or under its control or guidance, are permanently enjoined and restrained from conducting any telephone solicitation:

- A. Which fails to use a written contract as required by the Consumer Solicitation Sales Act, 32 M.R.S.A. §§ 4661-4671;
- B. Which is made without being registered as a Transient Seller as required by the Transient Sales Act, 32 M.R.S.A. §§ 14701-14716;
- C. Which uses deceptive sales practices, including misrepresentations or the creation of false impression, in violation of 32 M.R.S.A. § 4671 and 10 M.R.S.A. § 1212; or
- D. Which attempts to collect a debt that was the result of an unfair and deceptive telephone solicitation.

3. The Defendant is further ordered to:

- A. Declare null and void any contract it has entered into with a Maine business, unless the business affirmatively agrees in writing that the contract not be cancelled;
- B. Within 90 days of the date of this Order, upon written request by the Maine business, refund any money paid to it by the Maine business;
- C. Refund any monies paid to it by the following Maine business:
  - (1) High Pine Well Drilling, Inc., 116 Buxton Road, Buxton, ME 04093 (\$299.95);
  - (2) Jacques Cartier Club, PO Box 578, Sabattus, ME 04280 (\$399.95); and
  - (3) Eggemoggin Baptist Church, Reach Road, Sedgwick, ME 04676 in the sum of \$200.00.



This money shall be in the form of a bank check or a cashier's check, made out to the business in question and must be delivered to the Attorney General at the same time the Defendant delivers this signed Consent Decree.

- D. Cancel any debt collection efforts against Maine businesses which responded to the Defendant's solicitation.
- E. If the Defendant has reported to any credit reporting agency that a Maine business has breached its contract, inform the credit reporting agency that the contract has been cancelled and that the business is not in breach of the contract.

4. The Defendant is further ordered, pursuant to 5 M.R.S.A. § 209, to pay a Civil Penalty of \$1,500.00, which shall be paid at the same time the Defendant delivers this signed Consent Decree to the Attorney General. The payment shall be payable to the Office of the Attorney General and be in the form of a bank check or cashier's check.

5. Any violation by the Defendant of the mandatory injunctions listed above in Paragraphs three and four shall be subject to the Civil Penalty listed in 5 M.R.S.A. § 209, up to \$10,000 per violation.


6. Jurisdiction is retained by this Court for the purpose of enabling the parties 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.

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

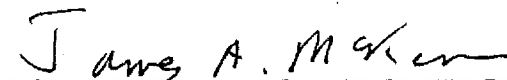
Dated: 6-7-04

  
Justice, Superior Court

Dated:

  
Defendant

Dated: 5/25/04

  
James A. McKenna  
Assistant Attorney General  
#6 State House Station  
Augusta, Maine 04333  
Maine Bar No. 1735  
(207) 626-8842  
Email: [jim.mckenna@maine.gov](mailto:jim.mckenna@maine.gov)

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**COUNT ONE**  
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22. Pursuant to 32 M.R.S.A. § 4670, violation of the Consumer Solicitation Sales Act is a *per se* violation of the Maine Unfair Trade Practices Act.

23. The Defendant's violation of 5 M.R.S.A. § 207 as described in this Count is intentional.

**COUNT TWO**  
**(Violation of the Maine Unfair Trade Practices Act - - Illegal Transient Sale)**

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

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- D. Which attempts to collect a debt that was the result of an unfair and deceptive telephone solicitation.

3. Pursuant to 5 M.R.S.A. § 209, order the Defendant to pay the Office of the Attorney General a Civil Penalty for each intentional violation of the Maine Unfair Trade Practices Act.

4. Pursuant to 5 M.R.S.A. § 209, order the Defendant to make refunds in full to consumers who paid the Defendant as the result of an unfair and deceptive telephone solicitation.


5. Pursuant to 14 M.R.S.A. § 1522, order the Defendant to pay the State's costs of litigation, including attorney 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.

Dated: 5/25/04

Respectfully submitted,

G. STEVEN ROWE  
Attorney General

  
James A. McKenna  
Assistant Attorney General  
#6 State House Station  
Augusta, Maine 04333  
Maine Bar No. 1735  
(207) 626-8842  
Email: [jim.mckenna@maine.gov](mailto:jim.mckenna@maine.gov)