

STATE OF MAINE
KENNEBEC, ss.

SUPERIOR COURT
CIVIL ACTION
Docket No.: _____

STATE OF MAINE,

Plaintiff,

v.

STURBRIDGE YANKEE WORKSHOP
CORPORATION and
GARY BOISVERT,

Defendants.

**COMPLAINT
(Injunctive Relief Sought)**

Plaintiff State of Maine brings this action against Defendants Sturbridge Yankee Workshop Corporation and Gary Boisvert and alleges as follows:

THE PARTIES

1. Plaintiff State of Maine (the “State”) is a sovereign state that is acting through its Attorney General pursuant to the powers granted to him by the Maine Unfair Trade Practices Act, 5 M.R.S.A. §§ 205-A-214 (Westlaw July 12, 2022) (“UTPA”), and vested in him by the common law.

2. Defendant Sturbridge Yankee Workshop Corporation (“Sturbridge Yankee Workshop”) is a Maine business corporation with a place of business in Westbrook, Maine.

3. Defendant Gary Boisvert (“Boisvert”) is an individual residing in Biddeford, Maine and who at all relevant times has been the President and General Manager of Sturbridge Yankee and had knowledge of, actively participated in, and/or directed the conduct of Sturbridge Yankee alleged herein.

JURISDICTION AND VENUE

4. The Court has personal jurisdiction over the parties pursuant to 14 M.R.S.A. § 704-A (Westlaw September 1, 2022).

5. The Court has subject matter jurisdiction pursuant to 4 M.R.S.A. § 105 (Westlaw September 1, 2022) and 5 M.R.S.A. § 209.

6. Venue is proper in this Court pursuant to 5 M.R.S.A. § 209.

STATUTORY BACKGROUND

Unfair Trade Practices Act

7. 5 M.R.S.A. § 207 establishes that “unfair or deceptive acts or practices in the conduct of any trade or commerce are . . . unlawful.”

8. 5 M.R.S.A. § 209 provides that:

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 section 207 to be unlawful, and that proceedings would be in the public interest, he may bring an action in the name of the State against such person to restrain by temporary or permanent injunction the use of such method, act or practice and the court may make such other orders or 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 method, act or practice, any moneys or property, real or personal, which may have been acquired by means of such method, act or practice.

9. Under 5 M.R.S.A. § 209, each intentional violation of 5 M.R.S.A. § 207 is a civil violation for which a penalty of up to \$10,000 may be imposed.

10. 5 M.R.S.A. § 211 provides that:

The Attorney General, whenever he believes any person to be or to have been in violation of this chapter, may examine or cause to be examined for that purpose, any books, records, papers and memoranda of whatever nature relevant to such alleged violation. The Attorney General may require the attendance of such person or of any other person having knowledge in the premises at any place in the county where such person resides or has a place of business or in Kennebec County if such person is

a nonresident or has no place of business within the State, and may take testimony and require proof material for his information, and may administer oaths or take acknowledgement in respect of any book, record, paper or memorandum. The Attorney General shall serve notice of the time, place and cause of such examination or attendance at least 10 days prior to the date of such examination.

11. 5 M.R.S.A. § 212 provides that:

A person upon whom a notice is served pursuant to section 211 shall comply with the terms thereof unless otherwise provided by the order of a court of this State. Any person who fails to appear, or with intent to avoid, evade or prevent compliance, in whole or in part, with any civil investigation under this section, removes from any place, conceals, withholds or destroys, mutilates, alters or by any other means falsifies any documentary material in the possession, custody or control of any person subject of any such notice, or knowingly conceals any relevant information, shall be subject to a civil penalty of not more than \$5,000 payable to the State to be recovered in a civil action.

12. The Court must award litigation costs, including court costs, reasonable attorneys' fees, and reasonable expert witness fees, should the State prevail in an action brought pursuant to 5 M.R.S.A. § 209. *See* 14 M.R.S.A. § 1522(1)(A) (September 1, 2022).

FACTUAL ALLEGATIONS

13. Sturbridge Yankee Workshop is a direct-to-consumer catalogue retailer that sells mid-to-high-end household goods, including furniture and home décor, to customers nationally.

14. Many of Sturbridge Yankee Workshop's customers pay by credit card. Until very recently, Sturbridge Yankee Workshop has maintained a practice of charging a customer's credit card for an order only after an ordered item of merchandise has shipped. Therefore, if an item had not yet shipped, it was Sturbridge Yankee Workshop's policy to permit a customer to cancel the order without any charge.

15. However, contrary to its longstanding policy, within the past several months Sturbridge Yankee Workshop has regularly charged customers' credit cards for unshipped items.

16. This change in policy has come at a time when Sturbridge Yankee Workshop has faced increasingly serious financial distress, including lower sales, quickly diminishing cash-on-hand, and snowballing liabilities to vendors and service providers.

17. This financial distress has recently become dire. In fact, in early August 2022, Boisvert announced to employees, certain vendors, and service providers that Sturbridge Yankee Workshop was permanently closing and would be liquidating all its assets.

18. Despite this development, Sturbridge Yankee Workshop continued to charge customers' credit cards for unshipped items. Many of these charges were for items that Sturbridge Yankee Workshop did not have inventory. Worse still, at this point Sturbridge Yankee Workshop had decided that it would not purchase any new inventory from suppliers to satisfy outstanding orders.

19. This situation resulted in a large increase in the volume of emails and calls to Sturbridge Yankee Workshop from dissatisfied customers who had ordered and/or paid for items that had not been received, let alone shipped. In response, on August 12, 2022, Sturbridge Yankee Workshop stopped responding to customer emails and phone calls.

20. Naturally, because customers could not reach Sturbridge Yankee Workshop, the business's credit card processor was also receiving an abnormally high number of chargeback requests from customers for merchandise that had not been received. To satisfy these chargebacks requests, the credit card processor would directly debit the business' Operating Account, which was the sole depository account for customer payments.

21. To prevent these chargebacks that would have otherwise resulted in payments being refunded to Sturbridge Yankee Workshop's customers, on or about August 30, 2022, Boisvert transferred nearly all the funds in the Operating Account to another account over which

he had exclusive control on behalf of Sturbridge Yankee Workshop. The total amount transferred was \$165,000. The remaining balance in the Operating Account to satisfy customer refunds was approximately \$2,400.

22. On or about August 31, 2022, Boisvert shut down Sturbridge Yankee Workshop's website and Facebook page. Because the website and the Facebook page have been shut down, and the customer email and phone line are no longer operational, customers' ability to request a refund or check on the status of an order has been severely limited. Their only recourse is to write a letter. However, there has been no dedicated employee to receive and respond to customer letters since August 12, 2022.

23. According to a report based on customer and financial data that is current as of September 1, 2022, Sturbridge Yankee Workshop owes \$309,000 in refunds to customers.

24. Boisvert has admitted that after Sturbridge Yankee Workshop liquidates its assets, it will be prioritizing repayment to its owner and, as a result, many if not most customers will not receive the refunds they are owed.

25. Sturbridge Yankee Workshop and Boisvert have failed to inform customers that the business is closing, that its assets are being liquidated, or that they will not be receiving refunds owed to them.

COUNT I – UNFAIR TRADE PRACTICES

26. The State incorporates the allegations of the foregoing paragraphs as if fully set forth herein.

27. By taking orders from customers that will not be fulfilled, charging customers' credits cards for items that will not be shipped, failing to issue refunds owed to customers, transferring assets to prevent customers from receiving refunds they are owed, and failing to

inform customers of the business's impending closure and liquidation that will leave them with substantial financial loss, Defendants have engaged in and are engaging in unfair and deceptive acts and conduct in trade or commerce in violation of 5 M.R.S.A. § 207.

28. Defendants' acts and conduct in violation of 5 M.R.S.A. § 207 was and is intentional.

29. Defendants' customers have and will suffer ascertainable loss from Defendants' acts and conduct in violation of 5 M.R.S.A. § 207.

RELIEF SOUGHT

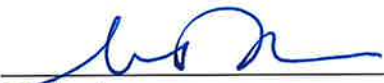
NOW THEREFORE, the State requests that the Court enter judgment in its favor and against the Defendants, and grant the following relief:

- (i) Enter a preliminary and permanent injunction prohibiting Defendants from:
 - a. Taking an order from any customer if they do not have inventory on hand to fulfill that order;
 - b. Charging or otherwise requiring any customer to pay for any item prior to its shipment to the customer;
 - c. Transferring any asset of Sturbridge Yankee Workshop except when necessary to satisfy regularly scheduled W-2 employee payroll obligations, to issue a refund owed to a customer, or to ship ordered merchandise to a customer;
 - d. Depleting or otherwise disposing of any funds in the Operating Account or any other bank or financial account of Sturbridge Yankee Workshop except when necessary to issue a refund to a customer or to satisfy regularly scheduled W-2 employee payroll obligations;

- e. Engaging in any acts or conduct in violation of 5 M.R.S.A. § 207 as alleged herein;
- (ii) Order that Defendants jointly and severally must pay restitution for the loss suffered by any customer of Defendants from their acts and conduct in violation of 5 M.R.S.A. § 209;
- (iii) Assess a civil penalty against Defendants jointly and severally in an amount not to exceed \$10,000 for each and every intentional violation of 5 M.R.S.A. § 209;
- (iv) Award the State its litigation costs, including court costs, reasonable attorneys' fees, and reasonable expert witness fees; and
- (v) Grant any additional relief to the State that is just and proper under the circumstances.

Dated at Augusta, Maine this 2nd day of September, 2022.

AARON M. FREY
Attorney General



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STATE OF MAINE
KENNEBEC, ss.

SUPERIOR COURT
CIVIL ACTION
Docket No.: CV-22-148

STATE OF MAINE,

Plaintiff,

v.

STURBRIDGE YANKEE WORKSHOP
CORPORATION and
GARY BOISVERT,

Defendants.

CONSENT JUDGMENT

The State of Maine, by and through its Attorney General, Aaron M. Frey, brought this action against Sturbridge Yankee Workshop Corporation, a Maine business corporation with a principal place of business in Westbrook, Maine, and Gary Boisvert, the General Manager of Sturbridge Yankee Workshop Corporation and a Maine resident. The State alleges in its Complaint that Defendants have engaged in conduct that violates the Maine Unfair Trade Practices Act, 5 M.R.S.A. §§ 205-A -214, including failing to pay refunds to customers for orders that will not be fulfilled due to the permanent closure of Sturbridge Yankee Workshop Corporation's business.

Defendants deny wrongdoing or fault, however, they consent to the entry of this judgment for the purpose of settlement. Defendants acknowledge that by consenting to the entry of this judgment, they are waiving their opportunity to contest the State's allegations and any right to appeal from this judgment.

Accordingly, upon the consent of the Parties, the Court hereby enters judgment in this action as follows:

JURISDICTION AND VENUE

1. The Court has subject matter jurisdiction over this matter pursuant to 4 M.R.S.A. § 105 and 5 M.R.S.A. § 209. The Court has jurisdiction over the parties pursuant to 14 M.R.S.A. § 704-A.

2. Venue is proper in this Court pursuant to 5 M.R.S.A. § 209.

PAYMENT TO THE STATE AND RESTITUTION TO CUSTOMERS

3. Defendants shall pay the total sum of \$220,000 (Two Hundred Twenty Thousand Dollars) to the State. Payment shall be made as follows: the Attorney General shall receive payment of \$102,409 from TD Bank, by transfer of funds of Sturbridge Yankee Workshop Corporation now held at TD Bank and now subject to an attachment lien in favor of the Attorney General in this case. The balance of \$117,591 shall be paid to the Attorney General within five business days of the entry of the Consent Judgment.

4. TD Bank is hereby authorized and directed to forthwith remit the sum of \$102,409 to the Attorney General, by instrument payable to the Attorney General for the State of Maine.

5. The order entered by this Court in this case on September 2, 2022, Approving Ex Parte Attachment and Attachment on Trustee Process against Sturbridge Yankee Workshop Corporation and Gary Boisvert, and the attachment lien created by the recording of said Order in the York County Registry of Deeds in Book 19121, Page 313, are hereby vacated and terminated, and said Order and said attachment lien are hereby terminated and discharged.

6. The Attorney General shall adopt reasonable procedures for notification to customers of Sturbridge Yankee Workshop Corporation of the availability of funds for

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distribution to customers who may be entitled to refunds as restitution, and for payment of such funds to customers who may be entitled to refunds and restitution from the business.

7. The Attorney General shall have sole discretion to determine whether a customer is entitled to restitution and the amount of restitution to which a customer is entitled. No customer shall be required to accept the restitution offered by the Attorney General; however, any customer that accepts the restitution offered by the Attorney General shall be deemed to have released Defendants from any refund claim, in any amount.

8. If a customer declines or fails to respond to a restitution offer from the Attorney General, then that customer shall not be deemed to have released Defendants from any refund claim, nor shall the declination or failure of a customer to respond to the restitution offer made by the Attorney General establish the validity or amount of any claim of such customer against the Defendants.

9. The amount of funds to which the Attorney General determined that a customer was entitled, but which was not claimed, shall be retained by the Attorney General to be distributed and/or applied at his sole discretion and shall not be considered unclaimed or abandoned property under the Maine Unclaimed Property Act, 33 M.R.S.A. §§ 2051-2223.

PERMANENT INJUNCTION

10. Pursuant to 5 M.R.S.A. § 209 and Rule 65 of the Maine Rules of Civil Procedure, the Court issues the following injunctive relief, which shall supersede the temporary restraining order issued by the Court in this matter on September 2, 2022, and which shall bind not only the named enjoined party or parties but also any of their agents, servants, employees, representatives, and those persons in active concert or participation with them who receive notice of this judgment:

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a. Defendants shall not engage in any unfair or deceptive acts or practices in the conduct of any trade or commerce in violation of 5 M.R.S.A. § 207; and

b. Sturbridge Yankee Workshop Corporation shall not solicit orders from consumers, advertise for sale to consumers, or accept orders or payments from consumers; and

c. Sturbridge Yankee Workshop Corporation shall take all further steps reasonably necessary to permanently close its business, wind down its affairs, and liquidate its assets.


FINAL JUDGMENT IN CASE

11. Entry of this Consent Judgment shall constitute final judgment in this case, and all parties waive their rights to seek review or reconsideration of this Order for any cause; provided, however, that the foregoing notwithstanding, relief from this Consent Judgment may be requested by a party pursuant to Rules 60(b)(1), 60(b)(2) and 60(b)(3) of the Maine Rules of Civil Procedure, and within the time limits provided by such Rules for relief thereunder, but not otherwise.

SO ORDERED.

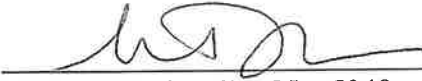
The Clerk is directed to incorporate this judgment on the docket by reference pursuant to Rule 79(a) of the Maine Rules of Civil Procedure.

Dated: 12-28-2022


Justice, Superior Court

AGREED TO BY:

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STURBRIDGE YANKEE WORKSHOP
CORPORATION:



By: Gary Boisvert
Its: President

GARY BOISVERT:



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