

MAINE STATE LEGISLATURE

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ONE HUNDRED AND FOURTH LEGISLATURE

Legislative Document

No. 1128

S. P. 329

In Senate, March 4, 1969

Referred to Committee on Business Legislation. Sent down for concurrence and 1,000 ordered printed.

JERROLD B. SPEERS, Secretary

Presented by Senator Gordon of Cumberland.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SIXTY-NINE

AN ACT Relating to Truth in Advertising.

Be it enacted by the People of the State of Maine, as follows:

R. S., T. 10, c. 206, additional. Title 10 of the Revised Statutes is amended by adding a new chapter 206, to read as follows:

CHAPTER 206

TRUTH IN ADVERTISING

§ 1211. Definitions

As used in this chapter:

1. Documentary material. "Documentary material" means the original or a copy of any book, record, report, memorandum, paper, communication, tabulation, map, chart, photograph, mechanical transcription or other tangible document or recording, wherever situate.

2. Person. "Person" means natural persons, corporations, trusts, partnerships, incorporated or unincorporated associations and any other legal entity.

3. Trade and commerce. "Trade" and "commerce" mean the advertising, offering for sale, sale or distribution of any services and any property, tangible or intangible, real, personal or mixed, and any other article, commodity or thing of value wherever situate, and shall include any trade or commerce directly or indirectly affecting the people of this State.

4. Unfair methods of competition and unfair or deceptive acts or practices.

“Unfair methods of competition and unfair or deceptive acts or practices” means any one or more of the following :

- A. Passing off goods or services as those of another ;
- B. Causing likelihood of confusion or of misunderstanding as to the source, sponsorship, approval or certification of goods or services ;
- C. Causing likelihood of confusion or of misunderstanding as to affiliation, connection or association with, or certification by, another ;
- D. Using deceptive representations or designations of geographic origin in connection with goods or services ;
- E. Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits or quantities that they do not have or that a person has a sponsorship, approval, status affiliation or connection that he does not have ;
- F. Representing that goods are original or new if they are deteriorated, altered, reconditioned, reclaimed, used or secondhand ;
- G. Representing that goods or services are of a particular standard, quality or grade, or that goods are of a particular style or model, if they are of another ;
- H. Disparaging the goods, services or business of another by false or misleading representation of fact ;
- I. Advertising goods or services with intent not to sell them as advertised ;
- J. Advertising goods or services with intent not to supply reasonably expectable public demand, unless the advertisement discloses a limitation of quantity ;
- K. Making false or misleading statements of fact concerning the reasons for, existence of, or amounts of price reductions ; or
- L. Engaging in any other conduct which similarly creates a likelihood of confusion or of misunderstanding.

§ 1212. Unlawful acts or practices

Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are declared unlawful. It is the intent of the Legislature that in construing this section due consideration and weight shall be given to the interpretations of the Federal Trade Commission and the federal courts relating to Sections 5 (a) (1) of the Federal Trade Commission Act (15 U.S.C. 45 (a) (1)), as from time to time amended.

§ 1213. Exemptions

Nothing in this chapter shall apply to actions or transactions permitted under laws administered by the State Public Utilities Commission or other

regulatory body or officer acting under statutory authority of this State or the United States.

§ 1214. Restraining prohibited acts

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 1212 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. The action may be brought in the Superior Court of the county in which such person resides or has his principal place of business, or, with consent of the parties, may be brought in the Superior Court of Kennebec County. The said courts are authorized to issue temporary or permanent injunctions to restrain and prevent violations of this chapter, and such injunctions shall be issued without bond.

§ 1215. Assurances of voluntary compliance

In the administration of this chapter, the Attorney General may accept an assurance of voluntary compliance with respect to any method, act or practice deemed to be violative of this chapter from any person who has engaged or was about to engage in such method, act or practice. Any such assurance shall be in writing and be filed with and subject to the approval of the Superior Court of the county in which the alleged violator resides or has his principal place of business, or the Superior Court of Kennebec County. Such assurance of voluntary compliance shall not be considered an admission of violation for any purpose. Matters thus closed may at any time be reopened by the Attorney General for further proceedings in the public interest, pursuant to section 1214.

§ 1216. Civil investigative demand

1. Demand. Whenever the Attorney General believes that any person may be in possession, custody or control of the original or a copy of any documentary material relevant to the subject matter of an investigation of a possible violation of this chapter, he may execute in writing and cause to be served upon such a person, a civil investigative demand requiring such person to produce such documentary material and permit inspection and copying, provided that this section shall not be applicable to criminal prosecutions.

2. Terms. Each such demand shall:

A. State the statute and section thereof, the alleged violation of which is under investigation, and the general subject matter of the investigation;

B. Describe the class or classes of documentary material to be produced thereunder with reasonable specificity so as fairly to indicate the material demanded;

C. Prescribe a return date within which the documentary material is to be produced; and

D. Identify the members of the Attorney General's staff to whom such documentary material is to be made available for inspection and copying.

3. Exceptions. No such demand shall:

A. Contain any requirements which would be unreasonable or improper if contained in a subpoena duces tecum issued by a court of this State; or

B. Require the disclosure of any documentary material which would be privileged, or which for any other reason would not be required by a subpoena duces tecum issued by a court of this State.

4. Service. Service of any such demand may be made by:

A. Delivering a duly executed copy thereof to the person to be served or to a partner or to any officer or agent authorized by appointment or by law to receive service of process on behalf of such person;

B. Delivering a duly executed copy thereof to the principal place of business in this State of the person to be served; or

C. Mailing by registered or certified mail a duly executed copy thereof addressed to the person to be served at the principal place of business in this State or, if said person has no place of business in this State, to his principal office or place of business.

5. Production. Documentary material demanded pursuant to this section shall be produced for inspection and copying during normal business hours at the principal office or place of business of the person served, or at such other times and places as may be agreed upon by the person served and the Attorney General.

6. —exceptions. No documentary material produced pursuant to a demand under this section shall, unless otherwise ordered by a court for good cause shown, be produced for inspection or copying by, nor shall the contents thereof be disclosed to, any person other than the authorized employee of the Attorney General, without the consent of the person who produced such material, provided that under such reasonable terms and conditions as the Attorney General shall prescribe, such documentary material shall be available for inspection and copying by the person who produced such material or any duly authorized representative of such person. The Attorney General or any attorney designated by him may use such documentary material or copies thereof as he determines necessary in the enforcement of this chapter, including presentation before any court, provided that any such material which contains trade secrets shall not be presented except with the approval of the court in which the action is pending after adequate notice to the person furnishing such material.

7. Petition to extend return date. At any time before the return date specified in the demand, or within 20 days after the demand has been served, whichever period is shorter, a petition to extend the return date for, or to modify or set aside the demand, stating good cause, may be filed in the Superior Court of the county where the parties reside or in the Superior Court of Kennebec County.

8. Compliance. A person upon whom a demand is served pursuant to this section shall comply with the terms thereof unless otherwise provided by order of court. Any person who, with intent to avoid, evade or prevent compliance, in whole or in part, with any civil investigative demand 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 demand shall be guilty of an offense against the State, and shall be punished, upon conviction, by a fine of not more than \$1,000 or by imprisonment for not more than 11 months, or by both.

9. Orders. Whenever any person fails to comply with any civil investigative demand duly served upon him under this section or whenever satisfactory copying or reproduction of any such material cannot be done and such person refuses to surrender such material, the Attorney General, through such officers or attorneys as he may designate, may file, in the Superior Court, in which such person resides, is found or transacts business, and serve upon such person a petition for an order of such court for the enforcement of this section, except that if such person transacts business in more than one county such petition shall be filed in the county in which such person maintains his principal place of business, or in such other county as may be agreed upon by the parties to such petition. Whenever any petition is filed in the Superior Court under this section, such court shall have jurisdiction to hear and determine the matter so presented, and to enter such order or orders as may be required to carry into effect this section. Any final order so entered shall be subject to appeal to the Supreme Judicial Court. Any disobedience of any final order entered under this section by any court shall be punished as a contempt thereof.

§ 1217. Civil penalties

Any person who violates the terms of an injunction issued under section 1214 shall forfeit and pay to the State a civil penalty of not more than \$5,000 per violation. For the purposes of this section, the Superior Court issuing an injunction shall retain jurisdiction, and the cause shall be continued, and in such cases the Attorney General acting in the name of the State may petition for recovery of civil penalties.

§ 1218. Forfeiture of corporate franchise

Upon petition by the Attorney General, the Superior Court may, in its discretion, order the dissolution or suspension or forfeiture of franchise of any corporation which violates the terms of an injunction issued under section 1214.