

STATE OF MAINE
KENNEBEC, SS.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. CV-13-

STATE OF MAINE,)
)
Plaintiff)
)
v.)
)
ZEALANDIA HOLDING COMPANY, INC.,)
F/K/A FESTIVA HOSPITALITY GROUP, INC.,)
PATTON HOSPITALITY MANAGEMENT,)
LLC, F/K/A FESTIVA MANAGEMENT)
GROUP, LLC, FESTIVA DEVELOPMENT)
GROUP, LLC, ZEALANDIA CAPITAL, INC.,)
F/K/A SETI MARKETING, INC., RESORT TRAVEL)
& XCHANGE, LLC, F/K/A FESTIVA TRAVEL)
& XCHANGE, FESTIVA REAL ESTATE)
HOLDINGS, LLC, F/K/A FESTIVA RESORTS,)
LLC, FESTIVA RESORTS ADVENTURE CLUB)
MEMBERS' ASSOCIATION, ZEALANDIA)
HOLDINGS, LLC, DONALD K. CLAYTON,)
AND HERBERT H. PATRICK, JR.,)
)
Defendants)

COMPLAINT
(Injunctive Relief
Requested)

Plaintiff, the State of Maine (hereinafter the "State"), brings this action by and through its Attorney General, Janet T. Mills, against Defendants Zealandia Holding Company, Inc., f/k/a Festiva Hospitality Group, Inc., Patton Hospitality Management, LLC, f/k/a Festiva Management Group, LLC, Festiva Development Group, LLC, Zealandia Capital, Inc., f/k/a SETI Marketing, Inc., Resort Travel & Xchange, LLC, f/k/a Festiva Travel & Xchange, Festiva Real Estate Holdings, LLC, f/k/a Festiva Resorts, LLC, Festiva Resorts Adventure Club Members' Association, Zealandia Holdings, LLC, Donald K. Clayton, and Herbert H. Patrick, Jr., pursuant to 5 M.R.S. §§ 207 and 209 of the Maine Unfair Trade Practices Act (the "UTPA," 5 M.R.S.

§§ 205-A – 214), seeking permanent injunctive relief, equitable relief for consumers, civil penalties, costs, and attorney's fees.

PARTIES

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

2. Defendant Zealandia Holding Company, Inc. ("ZHC"), f/k/a Festiva Hospitality Group, Inc., is a Nevada corporation that, at all material times, has been doing business in the State of Maine in connection with timeshare resort development, and the marketing, sale and management of Festiva's vacation club memberships. It is the parent holding company at the top of Festiva's corporate structure. Its principal place of business is One Vance Gap Road, Asheville, NC 28805.

3. Defendant Patton Hospitality Management, LLC, f/k/a Festiva Management Group, LLC, is a Nevada limited liability company that, at all material times, has been doing business in the State of Maine in connection with property management services for vacation resorts. Its managing member is Festiva Hospitality Group, Inc., n/k/a ZHC. Its principal place of business is One Vance Gap Road, Asheville, NC 28805.

4. Defendant Festiva Development Group, LLC is a Nevada limited liability company that, at all material times, has been doing business in the State of Maine by marketing and selling memberships in Festiva's vacation club. It is the declarant and administrator for the Festiva Adventure Club. Its managing member is ZHC. Its principal place of business is One Vance Gap Road, Asheville, NC 28805.

5. Defendant Zealandia Capital, Inc., f/k/a SETI Marketing, Inc., is a Nevada corporation that, at all material times, has been doing business in the State of Maine in connection with the collection of amounts

due from Festiva's vacation club members. Its sole shareholder is ZHC. Its principal place of business is One Vance Gap Road, Asheville, NC 28805.

6. Defendant Resort Travel & Xchange, LLC, f/k/a Festiva Travel & Xchange, is a Nevada limited liability company that, at all material times, has been doing business in the State of Maine in connection with facilitating trades with other third-party resorts for Festiva's vacation club members who wish to travel outside its network. Its managing member is ZHC. Its principal place of business is One Vance Gap Road, Asheville, NC 28805.

7. Defendant Festiva Real Estate Holdings, LLC, f/k/a Festiva Resorts, LLC, is a Nevada limited liability company that, at all material times, has been doing business in the State of Maine in connection with the ownership and management of Festiva's various real estate assets. Its managing member is ZHC. Its principal place of business is One Vance Gap Road, Asheville, NC 28805.

8. Defendant Festiva Resorts Adventure Club Members' Association is a South Carolina nonprofit corporation that, at all material times, has been doing business in the State of Maine as a members' association for Festiva's vacation club members. Its principal place of business is One Vance Gap Road, Asheville, NC 28805.

9. Defendant Zealandia Holdings, LLC is a Nevada limited liability company that, at all material times, has been doing business in the State of Maine in connection with the marketing, sale or management of Festiva's vacation club memberships. Its managing members are Defendants Donald K. Clayton and Herbert H. Patrick, Jr. Its principal place of business is One Vance Gap Road, Asheville, NC 28805.

10. Defendant Donald K. Clayton ("Clayton") is a resident of North Carolina and is a founder, with Defendant Herbert H. Patrick, Jr., of Festiva. He has ownership in ZHC, and is the chairman of its board.

At all times material to this Complaint, acting alone or in concert with others, Clayton has formulated, directed, controlled, had the authority to control, or participated in the acts and practices set forth in this Complaint. He, in connection with the matters alleged herein, has transacted business in Maine and throughout the United States. His business address is One Vance Gap Road, Asheville, NC 28805.

11. Defendant Herbert H. Patrick, Jr. ("Patrick") is a resident of North Carolina and is the other founder, with Clayton, of Festiva. He has ownership interests in ZHC, and is its president and treasurer. At all times material to this Complaint, acting alone or in concert with others, Patrick has formulated, directed, controlled, had the authority to control, or participated in the acts and practices set forth in this Complaint. He, in connection with the matters alleged herein, has transacted business in Maine and throughout the United States. His business address is One Vance Gap Road, Asheville, NC 28805.

12. Defendants are collectively referred to herein as "Festiva" or "Festiva Defendants." Any act that is attributed to Festiva in this Complaint includes any act of its employees, agents, controlled subsidiaries, and/or representatives acting on its behalf, as well as the named individual defendants.

JURISDICTION AND VENUE

13. This Court has jurisdiction over this action, pursuant to 4 M.R.S. § 105 and 5 M.R.S. § 209. This Court has jurisdiction over the Defendants, pursuant to 5 M.R.S. § 209 and 14 M.R.S. 704-A.

14. Venue is properly laid in Kennebec County,

STATUTORY BACKGROUND

15. Pursuant to 5 M.R.S. § 207 of the UTPA, unfair and deceptive acts or practices in the conduct of any trade or business are unlawful.

16. Pursuant to 5 M.R.S. § 209, whenever the Attorney General reasonably believes that someone is violating, or is about to violate, the UTPA, and that proceedings would be in the public interest, she may bring an action to enjoin the conduct and seek injunctive relief, including restitution, to remedy the unfair and deceptive acts, as well as civil penalties for intentional violations and costs of suit.

COURSE OF CONDUCT

17. In June 2000, Clayton and Patrick began Festiva's operations by marketing and selling points-based vacation club memberships to consumers throughout the United States and elsewhere, and by managing certain timeshare resorts in which Festiva held significant ownership interests.

18. In 2006, Festiva began selling points-based memberships in the Festiva Adventure Club (the "Club").

19. Festiva's timeshares, many of which are located in resorts along the East Coast, are held in a trust created by Defendants Festiva Development Group, LLC and Festiva Resorts Adventure Club Members' Association.

20. Consumers who purchase a Club membership receive a certain number of points, based on the purchase price, which can be used to reserve nights for a resort timeshare held by the trust. The points required for a vacation at each resort timeshare can vary by location and time.

21. Points are renewed annually or biennially, with consumers paying more for points that are renewed annually.

22. Festiva's current website claims that it has timeshares at 24 resorts and four cruise club destinations for nearly 55,000 Club members.

CONVERSION OF RANGELEY LAKE RESORT TIMESHARES

23. In September of 2008, Festiva acquired the remaining unsold timeshares at the Rangeley Lake Resort, a timeshare development in Rangeley, Maine.

24. Thereafter, Festiva began contacting Rangeley Lake Resort timeshare owners ("Rangeley owners") to attend an informational meeting to learn about changes to the resort.

25. In truth and in fact, the meetings were high-pressure sales presentations aimed at converting Rangeley owners to Club membership.

26. A conversion required the Rangeley owner to deed over his or her timeshare to the trust, and to pay additional money for points.

27. Festiva told Rangeley owners that their maintenance fees would be lowered or reduced if they converted compared to those who did not convert their timeshares.

28. In truth and in fact, Rangeley owners who converted to Club membership found that their maintenance fees have increased substantially.

29. Festiva told Rangeley owners that they would be able to take more vacations at a variety of resort locations if they converted to Club membership.

30. In truth and in fact, Rangeley owners who converted to Club membership experienced great difficulty booking any vacation, including one at the Rangeley Lake Resort.

31. When Rangeley owners complained to Festiva that they actually received less vacation time after they converted their timeshares, Festiva responded by telling them that they needed to buy more points.

32. Festiva represented, directly or by implication, that Rangeley owners would be compensated with points for the "equity" in their timeshares when they converted to Club membership.

33. In truth and in fact, Festiva gave points to Rangeley owners based upon the amount of money they paid, and not for any equity attributed to their timeshares.

SALES PRESENTATIONS AT RIVERSIDE DRIVE

34. Festiva also solicits consumers to attend sales presentations at its sales office located on 190 Riverside Drive in Portland, Maine.

35. Festiva uses sweepstakes entry forms, which are placed at malls, fairs and other venues, to generate potential leads to consumers whom it will contact to attend a sales presentation.

36. Consumers who enter a Festiva sweepstakes must disclose their annual household income and sign the entry form which, in fine print, grants Festiva permission to make telemarketing calls to them even if they are registered with the Do Not Call Registry.

37. Festiva uses the sweepstakes entry forms to identify consumers who meet its specifications for minimum household income and, at times, marital status.

38. Festiva induces consumers who meet its specifications to attend its sales presentations through promises of gifts, including free vacations.

39. In truth and in fact, many of these so-called gifts and “free” items are not gifts or free because they have restrictions and conditions that make it impossible for consumers to use, or require them to pay money to obtain the promised benefit.

40. Festiva induces consumers who meet its specifications to attend its sales presentations by informing them that they have been specially selected, using language such as, “carefully selected,” “you have been chosen,” or words to that effect, which has a tendency to lead consumers to believe that they have been specially selected by Festiva.

41. In truth and in fact, the consumers have not been specially selected by Festiva, apart from having been identified as meeting its specifications.

42. During sales presentations, Festiva represents to consumers that Club members can take vacations at any time and at any Festiva resort of their choosing every year or every other year, depending on the number of points purchased and when they are renewed.

43. In truth and in fact, most Club members have a difficult time scheduling any vacation due to the lack of available timeshares at Festiva’s resorts, particularly during peak times at desirable locations. Many consumers have owned their Club membership for years, but have been unable to schedule a vacation for their first or second choice of time and location.

44. During sales presentations, Festiva represents to consumers that they will save money on future vacations by purchasing a Club membership.

45. In truth and in fact, consumers do not realize the savings that Festiva claims because its methodology for calculating the savings is flawed, and excludes the cost of maintenance fees and periodic special assessments.

46. During sales presentations, Festiva has represented to consumers that their points will be rolled over to the next year if they do not use them in a year.

47. Many consumers later discovered that their points were “lost” because they were not rolled over automatically, but only if the consumer called Festiva within a certain time period to request it.

48. During sales presentations, Festiva tells consumers that it is easy to contact Festiva with questions and to make reservations for a vacation.

49. In truth and in fact, consumers report that it is nearly impossible to get in touch with anyone at Festiva who will assist them with customer service issues or vacation reservations.

50. Festiva fails to clearly and conspicuously disclose to consumers that maintenance fees increase regularly.

51. Festiva fails to clearly and conspicuously disclose to consumers that additional fees, or “special assessments,” can be imposed on Club members.

52. Festiva fails to clearly and conspicuously disclose to consumers that they have a right to cancel the contract within ten calendar days following its execution, pursuant to 33 M.R.S. § 592.

53. Some consumers who called Festiva to cancel within ten days found that Festiva failed to honor their requests.

SALES PRACTICES COMMON TO ALL FESTIVA SALES

54. Festiva creates a false sense of urgency that consumers must buy a Club membership at the sales presentation by telling them that the deal offered will not be available after they leave.

55. Consumers who agree to buy are then presented with multiple, and often complex, closing documents to sign, including a contract that obligates consumers to pay maintenance fees, together with any special assessments, for a period of 40 years.

56. Festiva does not give consumers adequate time to consider their decision to purchase, or to properly review the closing documents.

57. Festiva fails to disclose to consumers the total cost of Club membership, including, for example, the total cost of maintenance fees over the 40-year contract term.

58. Festiva represents to consumers, directly and by implication, that they will be able to sell their membership/points if, at any time, they decide that they no longer want to be Club members.

59. In truth and in fact, it is impossible for consumers to sell their membership/points because there is no market for them.

60. When consumers have asked for assistance in selling their membership/points, Festiva has referred them at times to unscrupulous timeshare resellers.

61. Festiva makes oral representations to consumers at the point of sale that are inconsistent with its contract and other documents.

COUNT I

(Rangeley Lake Resort Conversions – Deception)

62. Plaintiff repeats and realleges the preceding paragraphs of the Complaint.

63. Festiva induced Rangeley owners to convert their timeshares to Club membership by making misrepresentations, such as failure to convert their timeshares would result in increased maintenance fees; converting their timeshares would provide them with greater flexibility and access to more vacation times and locations; and they would be given credit for the “equity” in their timeshares.

64. Festiva’s conduct described in this count is deceptive in violation of 5 M.R.S. § 207, and is intentional.

COUNT II

(Riverside Drive Sales Practices)

65. Plaintiff repeats and realleges the preceding paragraphs of the Complaint.

66. Festiva induces consumers to attend sales presentations by promising them a gift or free item that is not a gift or free because it is restricted, conditional or requires the consumer to pay something.

67. Festiva’s conduct described in this count is unfair and deceptive in violation of 5 M.R.S. § 207, and is intentional.

COUNT III

(Riverside Drive Sales Practices)

68. Plaintiff repeats and realleges the preceding paragraphs of the Complaint

69. Festiva induces consumers to attend sales presentations by using language that has a tendency to lead consumers to believe that they have been specially selected when they have not been specially selected.

70. Festiva's conduct described in this count is unfair and deceptive in violation of 5 M.R.S. § 207, and is intentional.

COUNT IV

(Riverside Drive Sales Practices – Misrepresentations)

71. Plaintiff repeats and realleges the preceding paragraphs of the Complaint.

72. Festiva induces consumers to purchase points for membership in the Club by making misrepresentations, including those concerning the savings that they will realize; the ease and simplicity with which they can book a vacation; the availability of its resort timeshares at desired locations and times; the rollover of unused points; and Festiva's responsiveness to customer service issues.

73. Festiva's conduct described in this count is unfair and deceptive in violation of 5 M.R.S. § 207, and is intentional.

COUNT V

(Riverside Drive Sales Practices - Material Omissions)

74. Plaintiff repeats and realleges the preceding paragraphs of the Complaint.

75. Festiva fails to clearly and conspicuously disclose to consumers information that is material to their decision to purchase, including that consumers have a ten-day right to cancel the contract, that maintenance fees will increase, and that they can be required to pay special assessments.

76. Festiva's conduct described in this count is unfair and deceptive in violation of 5 M.R.S. § 207, and is intentional.

COUNT VI

(Common Sales Practices - High Pressure Sales Tactics)

77. Plaintiff repeats and realleges the preceding paragraphs of the Complaint.

78. Festiva creates a false sense of urgency to pressure consumers into buying a Club membership at a sales presentation, and fails to give consumers adequate time to consider their decision and to review sales documents before signing them.

79. Festiva's conduct described in this count is unfair in violation of 5 M.R.S. § 207, and is intentional.

COUNT VII

(Common Sales Practices - Failure to Disclose Total Cost)

80. Plaintiff repeats and realleges the preceding paragraphs of the Complaint.

81. Festiva fails to disclose the total cost of a membership in the Club, including the cost of maintenance fees over the 40-year contract term.

82. Festiva's conduct described in this count is unfair and deceptive in violation of 5 M.R.S. § 207, and is intentional.

COUNT VIII

(Common Sales Practices - Misrepresentations)

83. Plaintiff repeats and realleges the preceding paragraphs of the Complaint.

84. Festiva represents, directly and indirectly, to consumers that they will be able to sell their membership/points if they decide they no longer want to be Club members when, in fact, there is no market for their membership/points.

85. Festiva's conduct as described in this count is unfair and deceptive in violation of 5 M.R.S. § 207, and is intentional.

COUNT IX

(Common Sales Practices - Contradictory and Inconsistent Statements)

86. Plaintiff repeats and realleges the preceding paragraphs of the Complaint.

87. Festiva makes oral representations to consumers at the point of sale that are inconsistent with, and contradict, its contract and other documents.

88. Festiva's conduct as described in this count is unfair and deceptive in violation of 5 M.R.S. § 207, and is intentional.

RELIEF REQUESTED

Wherefore, Plaintiff requests that this Court enter the following relief:

1. Declare that Festiva has violated § 207 of the UTPA by:
 - A. Inducing Rangeley owners through the use of misrepresentations to convert their timeshares to Club membership;
 - B. Inducing consumers to attend its sales presentations by promising a gift or free item that is not a gift or free because it is restricted, conditional or requires the payment of money by the consumer;
 - C. Inducing consumers to attend its sales presentations using language that has a tendency to lead consumers to believe that they have been specially

selected when they have not been specially selected;

- D. Inducing consumers through the use of misrepresentations to purchase a Club membership;
- E. Failing to clearly and conspicuously disclose material information, including that maintenance fees will increase, that special assessments may be imposed, and that consumers have a right to cancel the contract within ten days of execution;
- F. Pressuring consumers into purchasing a Club membership at its sales presentations, and failing to give them adequate time to consider their decision or to review closing documents before execution;
- G. Failing to disclose to consumers the total cost of Club membership over the 40-year contract term, including maintenance fees;
- H. Representing to consumers that they will be able to sell their membership/points if they choose; and
- I. Making oral statements at the point of sale that are inconsistent with, or contradict, its contract or other documents.

2. Pursuant to 5 M.R.S. § 209 and M.R. Civ. P. 65, permanently enjoin Festiva, its agents, servants, employees, and those persons in active concert or participation with it who receive actual notice of the injunction from selling Club membership/points in Maine or to Maine consumers.

3. Pursuant to 5 M.R.S. § 209, order Festiva's contracts with Maine consumers rescinded, and order Festiva to reimburse each Maine consumer for payments made to it for Club membership/points, including any interest, maintenance fees and special assessments.

4. Pursuant to 5 M.R.S. § 209, assess a civil penalty, jointly and severally, against Festiva Defendants of up to \$10,000 per violation for each intentional violation of the UTPA.

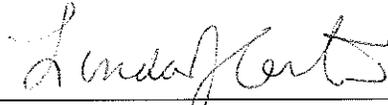
5. Pursuant to 5 M.R.S. § 209 and 14 M.R.S. § 1522(1)(A), order Festiva Defendants to pay, jointly and severally, to the Attorney General her costs of suit and investigation, including attorney's fees.

6. Order such other and further relief as the Court may deem necessary to remedy the effects of Festiva's unfair and deceptive business practices.

Dated: November 25, 2013

Respectfully submitted,

JANET T. MILLS
Attorney General



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