

STATE OF VERMONT

SUPERIOR COURT  
WASHINGTON UNIT 2012 FEB 16 P 3:20

CIVIL DIVISION  
DOCKET NO. 310-4-12 Wncw

|                                   |   |
|-----------------------------------|---|
| STATE OF VERMONT,                 | ) |
|                                   | ) |
| Plaintiff,                        | ) |
|                                   | ) |
| v.                                | ) |
|                                   | ) |
| AMERICAN THRUST TOBACCO, LLC, AND | ) |
| RAYMOND SMUK, D/B/A               | ) |
| AMERICANTHRUSTTOBACCO.COM,        | ) |
| AMERICANTHRUSTRYO.COM             | ) |
|                                   | ) |
| Defendants.                       | ) |

COMPLAINT

1. This is a civil action brought by the State of Vermont, by and through Attorney General William H. Sorrell, to enforce Vermont's ban on mail-order and Internet sales and delivery of tobacco products, 7 V.S.A. § 1010, Vermont's Directory Law, 33 V.S.A. §§ 1918 - 1919, and Vermont's Consumer Fraud Act, 9 V.S.A. § 2453.

Jurisdiction and Venue

- 2. This Court has subject matter jurisdiction over this matter pursuant to 4 V.S.A. § 113.
- 3. The Court has personal jurisdiction over Defendants because Defendants sell tobacco products to Vermont consumers by means of their www.americanhrusttobacco.com, www.americanhrustryo.com, and acts giving rise to this cause of action occurred within this state.
- 4. Venue is proper pursuant to 9 V.S.A. § 2458(a), because some of the business conducted by Defendants occurred in Washington County.

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### **Parties**

5. Plaintiff, State of Vermont, by and through Attorney General William H. Sorrell, is charged, *inter alia*, with enforcement of Vermont's Internet Ban, 7 V.S.A. § 1010, Vermont's Directory Law, 33 V.S.A. §§ 1918-1919, and Vermont's Consumer Fraud Act, 9 V.S.A. §§ 2451-2466.
6. Defendants are online, telephone, and/or mail order retailers of tobacco products.
7. Defendants own and/or operate the interactive websites *americanthrustobacco.com* and *americanthrustryo.com*.
8. *Americanthrustobacco.com* and *americanthrustryo.com* are interactive websites that sell tobacco products into many locations, including Vermont.
9. Defendant Raymond Smuk is the managing member of American Thrust Tobacco, LLC.
10. American Thrust Tobacco, LLC, is a Florida corporation registered with the New York Department of State.
11. Defendants maintain a physical facility at 35 Gateway Drive, Suite 300, Plattsburg, NY 12901.
12. Defendants do not conduct face-to-face sales of tobacco products in Vermont.

### **Statutory Scheme**

#### ***Vermont's Internet Ban***

13. Vermont law prohibits all persons from causing "cigarettes, roll-your-own tobacco, little cigars, or snuff, ordered or purchased by mail or through a computer network, telephonic network, or other electronic network, to be shipped to anyone other than a licensed wholesale dealer, distributor, or retail dealer in this state." 7 V.S.A. §

1010(b). Vermont's ban on non-face-to-face tobacco sales, also known as delivery sales, is commonly known as the Internet Ban and was enacted in 2007.

14. Violations of Vermont's Internet Ban are subject to civil penalties of up to \$5,000 per violation, 7 V.S.A. § 1010(d). For the purpose of imposing civil penalties under the Internet Ban, "each shipment or transport of cigarettes, roll-your-own tobacco, little cigars, or snuff shall constitute a separate violation." 7 V.S.A. § 1010(d)(2).

#### *Vermont's Directory Law*

15. The Attorney General's Office publishes on its website a list, commonly known as "the Directory," of all tobacco product manufacturers that have provided current and accurate certifications of compliance with Vermont law. 33 V.S.A. § 1918(a). It is illegal to sell, offer, or possess for sale in Vermont products not appearing on the Directory. 33 V.S.A. § 1919.
16. Violations of Vermont's Directory Law are punishable by a fine of up to \$5,000.00, or imprisonment of up to one year, or both. 33 V.S.A. § 1923(c). If a court determines that a person has violated the Directory Law, "the court shall order any profits, gains, gross receipts, or other benefit from the violation to be disgorged and paid to the state treasurer for deposit in the tobacco litigation settlement fund established pursuant to 32 V.S.A § 435a." 33 V.S.A. § 1923(e).

#### *Vermont's Consumer Fraud Act*

17. A violation of Vermont's Internet Ban is an unfair or deceptive trade practice in violation of Vermont's Consumer Fraud Act, 9 V.S.A. §§ 2451-2466. 7 V.S.A. § 1010(d)(5).

18. A violation of Vermont's Directory Law is an unfair or deceptive trade practice in violation of Vermont's Consumer Fraud Act, 9 V.S.A. §§ 2451-2466. 33 V.S.A. § 1923(d).
19. Violations of Vermont's Consumer Fraud Act are subject to civil penalties of not more than \$10,000 for each violation of the law. 9 V.S.A. § 2458.

#### **Facts**

20. On or about December 21, 2010, Defendants caused roll-your-own tobacco purchased over the internet to be shipped to a Vermont consumer, namely one 16 ounce bag of "Thrust Premium" roll-your-own tobacco.
21. On or about February 15, 2012 Defendants caused roll-your-own tobacco purchased over the internet to be shipped to a Vermont consumer, namely one 6 ounce can of Bugler Gold roll-your-own tobacco.
22. Thrust Premium roll-your-own tobacco was not and has never been listed on the Directory.

#### **Count One: Violation of Vermont's Internet Ban**

23. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein.
24. Defendants' conduct alleged above violates Vermont's Internet Ban in that Defendants caused roll-your-own tobacco purchased over the Internet to be shipped to Vermont consumers.

#### **Count Two: Violation of Vermont's Directory Law**

25. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein.
26. Defendants' conduct alleged above violates Vermont's Directory Law in that Defendants sold Thrust Premium roll-your-own tobacco to a Vermont consumer on or

about December 21, 2010, despite that product not being listed for sale on the Directory.

**Count Three: Violation of Vermont's Consumer Fraud Act**

27. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein.
28. Defendants' alleged violations of Vermont's Internet Ban and Directory Law are also unfair or deceptive acts or practices contrary to Vermont's Consumer Fraud Act.

**PRAYER FOR RELIEF**

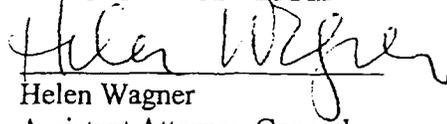
WHEREFORE, Plaintiff prays that this Court enter an Order:

- A. Issuing a permanent injunction prohibiting Defendants, their agents, employees, and all other persons and entities, corporate or otherwise, in concert or participation with any of them from: (1) conducting sales of prohibited tobacco products into Vermont contrary to the Internet Ban; (2) selling products not listed on the Directory to Vermont consumers; (3) violating the Consumer Fraud Act.
- B. Imposing the maximum civil penalty allowed under 7 V.S.A. § 1010(d)(2), 33 V.S.A. § 1923, and 9 V.S.A. § 2458(b)(1), and
- C. Awarding attorneys fees and costs of the prosecution and investigation of this action as allowed under 7 V.S.A. § 1010(d)(4), 33 V.S.A. § 1923(b), and 9 V.S.A. § 2458(b)(3) .
- D. Granting any further relief as the Court deems equitable and proper.

Date: March 29, 2012

STATE OF VERMONT  
WILLIAM H. SORRELL  
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By:



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