

VT SUPERIOR COURT
WASHINGTON UNIT

STATE OF VERMONT
SUPERIOR COURT
WASHINGTON UNIT

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STATE OF VERMONT,)
Plaintiff)
)
v.)
)
FIRED-UP TOBACCO, INC.)
CHRISTOPHER P. MOREAU,)
Defendants)
)

FILED

CIVIL DIVISION
Docket No. 665-11-14Wncv

COMPLAINT

Introduction

1. Vermont's Attorney General brings this suit against Defendants Fired-Up Tobacco, Inc. and Christopher P. Moreau in response to their multiple violations of Vermont's tobacco and consumer protection laws. Defendants have violated Vermont's tobacco laws and Consumer Protection Act by selling tobacco products not legal for sale in Vermont, namely "Fired-Up RYO." Defendants have also failed to report as required the sale of roll-your-own tobacco ("RYO"), failed to timely file monthly reports, and failed to maintain records, all as required by Vermont's tobacco laws. The Attorney General seeks injunctive relief, civil penalties, fees and costs, disgorgement of profits to the tobacco trust fund, and other appropriate relief.

Office of the
ATTORNEY
GENERAL
109 State Street
Montpelier, VT
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Parties, Jurisdiction, and Venue

2. Defendant Fired-Up Tobacco, Inc. is a domestic, for-profit corporation incorporated under the laws of Vermont, with its principal place of business at 379 South Barre Road, South Barre, Vermont.

3. Defendant Christopher P. Moreau is a Vermont resident and the President and Treasurer of Fired-Up Tobacco, Inc.

4. Fired-Up Tobacco, Inc. held a tobacco wholesale dealer license issued by the Vermont Department of Taxes during all relevant time periods.

5. Fired-Up Tobacco, Inc. holds a tobacco retail dealer license issued by the Vermont Department of Liquor Control.

6. Fired-Up Tobacco, Inc. sells cigarettes and RYO and related merchandise, from its retail location in South Barre.

7. Attorney General William H. Sorrell is charged with enforcement of Vermont's tobacco laws, 33 V.S.A., Chapter 19, Subchapter 1B, and Vermont's Consumer Protection Act, 9 V.S.A., Chapter 63.

8. This Court has personal jurisdiction over Defendants and is the proper venue for this action, as Defendants sell tobacco products from a location at 379 South Barre Road, South Barre, Vermont, which is located in Washington County, Vermont.

Regulatory Framework

Directory of Products Legal for Sale in Vermont

9. In order for cigarettes and RYO to be legal for sale in Vermont, tobacco product manufacturers must provide annual certifications, which include information on

their sales of cigarette and RYO brand styles, to the Office of the Attorney General.

33 V.S.A. § 1917.

10. The Attorney General's Office publishes on its website a list, commonly known as "the Directory," of all tobacco product manufacturers and their brand families that have current and accurate annual certifications. 33 V.S.A. § 1918(a). The Directory can be found at

<http://www.atg.state.vt.us/assets/files/Tobacco%20Product%20Directory.pdf>

11. It is illegal to sell, offer, or possess for sale in Vermont cigarettes or RYO not appearing on the Directory or made by a manufacturer not listed on the Directory.

33 V.S.A. § 1919.

12. A violation of 33 V.S.A. § 1919 is an unfair or deceptive trade practice in violation of Vermont's Consumer Protection Act. 33 V.S.A. § 1923(d).

13. The Attorney General is authorized to prosecute violations of 33 V.S.A. § 1919 and violations of the Vermont Consumer Protection Act, 9 V.S.A. § 2458(b).

Licensed Wholesale Dealers

14. A wholesale dealer is a person who either imports or causes to be imported into Vermont any tobacco products, including cigarettes and RYO. 32 V.S.A. § 7702(16).

15. Before engaging in the business of selling tobacco products in Vermont, a wholesale dealer must obtain a license from the Vermont Department of Taxes. 32 V.S.A.

§ 7731.

16. Wholesale dealers which sell cigarettes and RYO manufactured by certain manufacturers¹ must file monthly reports with the Commissioner of Taxes (“Commissioner”) as to the cigarettes and RYO sold into Vermont upon which tobacco tax has been paid. The report must be filed on or before the 15th day of each month regarding sales of the preceding month. 32 V.S.A. § 7785, see also 33 V.S.A. § 1921(a). This report is known as the NPM-1 report.

17. Wholesale dealers are also required to keep complete and accurate records of all tobacco products manufactured, produced, purchased, transferred and sold by the dealer. These records must be safely preserved for six years in such a manner as to ensure permanency and accessibility for inspection by the Commissioner and authorized agents. 32 V.S.A. § 7777(a), see also 33 V.S.A. § 1921(a) (referencing “stamping agent,” the earlier statutory term for licensed wholesale dealer, 33 V.S.A. § 1916(10)).

18. The penalties and remedies provided by 33 V.S.A., Chapter 19, Subchapter 1B are cumulative to each other and to the penalties or remedies, or both, available under all other laws of this State. 33 V.S.A. § 1923(f).

Facts

19. Fired-Up Tobacco, Inc. was licensed as a wholesale dealer by the Vermont Department of Taxes during all relevant periods. Its license was revoked on April 17, 2014.

Sale of Fired-Up RYO

20. In 2014, Defendants packaged and sold their own store-brand, Fired-Up RYO, from their retail location.

¹ Licensed wholesale dealers are required to report only the sale of cigarettes and RYO made by manufacturers which were not part of the Master Settlement Agreement reached in 1997. These manufacturers are called non-participating manufacturers or NPMs.

21. Fired-Up RYO is not a brand style listed on the Directory and is not manufactured by a tobacco product manufacturer who is listed on the Directory.

22. On March 17, 2014, Defendants possessed and offered for sale Fired-Up RYO in their retail establishment.

23. On March 18, 2104, Defendants possessed and offered for sale Fired-Up RYO in their retail establishment.

24. On March 24, 2014, Defendants possessed and offered for sale Fired-Up RYO in their retail establishment.

25. On March 25, 2014, Defendants possessed and offered for sale Fired-Up RYO in their retail establishment.

26. On March 25, 2015 Defendants sold a six-ounce bag of Fired-Up RYO to an investigator from the Office of the Attorney General at the Defendants' business location.

27. On April 1, 2014, Defendants possessed and offered for sale Fired-Up RYO in their retail establishment.

28. On April 1, 2014, four six-ounce bags of Fired-Up RYO were seized by an investigator from the Department of Liquor Control at the Defendants' retail establishment.

Sale of Zig-Zag RYO

29. Zig-Zag RYO is a product manufactured by a manufacturer which is listed on the Directory but which did not participate in the tobacco Master Settlement Agreement (a "non-participating manufacturer" or "NPM"). Consequently, a licensed wholesale dealer selling Zig-Zag RYO must both pay the taxes if they were not previously paid and report the sale on its monthly NPM-1 form.

30. In 2008, Defendants purchased in excess of 170 ounces of Zig-Zag RYO from an out-of-state entity, Merchandising Services of America ("MSA"), for sale into Vermont. The sale of this Zig-Zag RYO in Vermont was not reported on Defendants' monthly NPM-1 reports.

31. In 2009, Defendants purchased in excess of 480 ounces of Zig-Zag RYO from MSA, for sale into Vermont. The sale of this Zig-Zag RYO in Vermont was not reported on Defendants' monthly NPM-1 reports.

32. In 2010, Defendants purchased in excess of 460 ounces of Zig-Zag RYO from MSA, for sale into Vermont. The sale of this Zig-Zag RYO in Vermont was not reported on Defendants' monthly NPM-1 reports.

33. In 2011, Defendants purchased in excess of 280 ounces of Zig-Zag RYO from MSA, for sale into Vermont. The sale of this Zig-Zag RYO in Vermont was not reported on Defendants' monthly NPM-1 reports.

34. In 2012, Defendants purchased in excess of 260 ounces of Zig-Zag RYO from MSA, for sale into Vermont. The sale of this Zig-Zag RYO in Vermont was not reported on Defendants' monthly NPM-1 reports.

35. In 2013, Defendants purchased in excess of 60 ounces of Zig-Zag RYO from MSA, for sale into Vermont. The sale of this Zig-Zag RYO in Vermont was not reported on Defendants' monthly NPM-1 reports.

Failure to File Timely NPM-1 Reports

36. In 2011, Defendants failed to file timely monthly NPM-1 reports for the months of April and July. No reports were ever filed for those months.

37. In 2013, Defendants failed to file timely monthly NPM-1 reports for the months of May through December. No reports were ever filed for those months.

38. In 2014, Defendants failed to file timely monthly NPM-1 reports for the months of January through April. No reports were ever filed for those months.

Record Retention

39. On April 7, 2014, the Office of the Attorney General requested by certified letter that Defendants comply with the record retention and inspection provisions of the Vermont tobacco statutes. The letter requested complete and accurate records of all cigarettes and RYO manufactured, produced, purchased, transferred, and sold by Defendants for the period of April 2008 through April 2014, and asked that documents be provided by close of business on April 18, 2014.

40. Defendants have not made the requested records available and have not maintained records in the manner required by 32 V.S.A. § 7777 and 33 V.S.A., § 1921(a).

Count One: Violations of 33 V.S.A. § 1919 – Sale of Fired-Up RYO

41. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein.

42. Defendants violated 33 V.S.A. § 1919 in that Defendants sold and offered for sale Fired-Up RYO, a brand of RYO that is not listed on Vermont's Directory.

43. A violation of 33 V.S.A. § 1919 is punishable by a fine of up to \$5,000.00, or imprisonment of up to one year, or both. 33 V.S.A. § 1923.

44. Each offer to sell constitutes a separate violation. 33 V.S.A. § 1923(a).

45. Each violation of 33 V.S.A. § 1919 may result in the imposition of a civil penalty in an amount not to exceed the greater of 500 percent of the retail value of the

cigarettes sold, offered for sale, or possessed for sale in violation of Title 33, Chapter 19, Subchapter 1B, or \$5,000.

46. If a person has violated 33 V.S.A., Chapter 19, Subchapter 1B, “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).

Count Two: Violations of Vermont’s Consumer Protection Act

47. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein.

48. Defendants engaged in unfair and deceptive acts and practices under the Vermont Consumer Protection Act in that Defendants sold and offered for sale their own brand of RYO, Fired-Up RYO, on multiple occasions during March and April of 2014.

49. Each violation of Vermont’s Consumer Protection Act is subject to civil penalties of not more than \$10,000. 9 V.S.A. § 2458.

Count Three: Violations of 33 V.S.A. § 1921(a) -- Failure to File Monthly Reports and Record Retention

50. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein.

51. Defendants violated 33 V.S.A § 1921(a), in that:

52. Defendants failed to report the sale of Zig-Zag RYO on monthly NPM-1 reports from 2008-2013;

53. Defendants failed to file any monthly reports during certain months of 2011, 2013 and 2014; and

54. Defendants failed to make available to the Office of the Attorney General six years' worth of records as required, or to retain them in a manner that ensures permanency and accessibility for inspection.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff State of Vermont requests judgment in its favor and an Order providing the following relief:

55. 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) selling or possessing for sale or offering for sale cigarettes or RYO products not listed on the Directory to Vermont consumers; (2) violating Vermont's Consumer Protection Act; (3) violating 33 V.S.A. § 1921(a).

56. Civil penalties of up to \$5,000 for each violation of 33 V.S.A. §§ 1919 and 1921, and up to \$10,000 for each violation of the Consumer Protection Act.

57. An accounting of all Defendants' profits, gains, gross receipts from the years 2008-2014. Such profits, gains, gross receipts, or other benefit from the violations of 33 V.S.A. §§ 1919 and 1921 are 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.

58. Investigative and litigation costs and fees to be paid to the State of Vermont.

59. Such other relief as the Court deems appropriate.

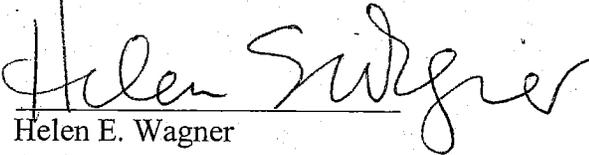
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Date: November 6, 2014

STATE OF VERMONT

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