

**STATE OF VERMONT
SUPERIOR COURT
WASHINGTON UNIT**

STATE OF VERMONT,)	
)	
Plaintiff)	
)	CIVIL DIVISION
v.)	Docket No. _____
)	
McISAAC AND BAIROS NEW)	
ENGLAND DISTRIBUTION LLC,)	
)	
Defendant)	

COMPLAINT

Introduction

1. Vermont's Attorney General brings this suit against Defendant McIsaac and Bairos New Distribution LLC in response to their multiple violations of Vermont's tobacco and consumer protection laws. Defendant has violated Vermont laws by selling tobacco products not legal for sale in Vermont, namely Seneca cigarettes. The Attorney General seeks injunctive relief, civil penalties, and other appropriate relief.

Parties, Jurisdiction, and Venue

2. Defendant is a domestic limited liability company incorporated in the state of Massachusetts. Its principal place of business is located at 238 Bodwell Avenue, Avon, Massachusetts.
3. Defendant is a distributor of tobacco products, including cigarettes, and holds a wholesale dealer's license from the Vermont Department of Taxes and files several different monthly reports with the State of Vermont.

**Office of the
ATTORNEY
GENERAL
109 State Street
Montpelier, VT
05609**

4. Defendant has registered with the Vermont Secretary of State as a foreign business in order to transact business in Vermont.
5. 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.
6. This Court has personal jurisdiction over Defendant's actions, as Defendant sold tobacco products in multiple locations in Vermont and is the holder of a Vermont Department of Taxes wholesale dealer's license.
7. This Court is the proper venue for this action under 12 V.S.A. § 402(a) as Defendant sold tobacco products in multiple locations in Vermont including in Washington county.
8. This action is in the public interest.

Regulatory Framework

9. In order for a tobacco product manufacturer's cigarettes and roll-your-own tobacco ("RYO") to be legal for sale in Vermont, such manufacturer must provide an annual certification that includes information required by Vermont statute. 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://ago.vermont.gov/assets/files/Consumer/Tobacco/Tobacco%20Product%20Directory.htm>.

11. The Attorney General's Office also publishes on its website a list, commonly known as the "Legal for Sale List", of all cigarettes and RYO that have been properly certified under 33 V.S.A. § 1917 and, for cigarettes, properly certified as fire-safe pursuant to 20 V.S.A. § 2756 et seq. This list can be found at <http://ago.vermont.gov/assets/files/Consumer/Tobacco/Cigarette%20Brands%20Certified%20as%20Fire-Safe%20and%20Legal%20for%20Sale%20in%20Vermont.pdf>
12. It is illegal to affix a Vermont tax stamp to or sell or offer 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.
13. A wholesale dealer is a person who either imports or causes to be imported into Vermont any tobacco products, including cigarettes. 32 V.S.A. § 7702(16).
14. Vermont tobacco statutes provide that "sale" or "sell" means any transfer, exchange or barter in any manner or by any means whatever, of any cigarettes or tobacco products. 32 V.S.A. § 7702(12).
15. Before engaging in the business of selling tobacco products into Vermont, a wholesale dealer must obtain a license from the Vermont Department of Taxes. 32 V.S.A. § 7731.
16. Payment of the tax on cigarettes in Vermont is evidenced by the affixing of tax stamps issued by the Vermont Department of Taxes to the packages containing the cigarettes. 32 V.S.A. § 7771(b).

17. Each stamp affixed and each sale or offer to sell cigarettes in violation of section 1919 constitutes a separate violation. 33 V.S.A. § 1923(a).
18. A violation of 33 V.S.A. § 1919 carries with it 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, or \$5,000. 33 V.S.A. § 1923 (a).
19. 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.
20. The Attorney General may seek injunctive relief as well as recovery of the costs of investigation and reasonable attorney's fees. 33 V.S.A. § 1923(b).
21. A violation of 33 V.S.A. § 1919 is an unfair or deceptive trade practice in violation of Vermont's Consumer Protection Act, 9 V.S.A. Chapter 63. 33 V.S.A. § 1923(d).
22. Each violation of Vermont's Consumer Protection Act is subject to civil penalties of not more than \$10,000. 9 V.S.A. § 2458.
23. 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).
24. 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).

Facts

25. McIsaac and Bairos New England Distribution LLC is licensed as a wholesale dealer by the Vermont Department of Taxes and was licensed during all relevant periods.
26. In late February 2015, Defendant purchased cigarette tax stamps from the Vermont Department of Taxes.
27. On or about late February through early March of 2015, Defendant sent sales representatives into Vermont. Those representatives visited approximately thirty retail establishments and offered for sale Seneca brand cigarettes manufactured by Grand River Enterprises.
28. A total of approximately 263 packs of Seneca cigarettes, consisting of 23 individual packs of Seneca cigarettes and 24 cartons of Seneca cigarettes, were distributed by Defendant's sales representatives among approximately seventeen retail establishments.
29. All cartons and packs distributed and offered for sale bore a Vermont tax stamp.
30. Seneca brand cigarettes are manufactured by Grand River Enterprises Six Nations, Ltd. ("Grand River"). Grand River is not a tobacco product manufacturer listed on Vermont's Directory. Seneca cigarettes do not appear on Vermont's Directory and are not legal for sale in Vermont.

**Office of the
ATTORNEY
GENERAL
109 State Street
Montpelier, VT
05609**

Count One: Violations of 33 V.S.A. § 1919

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

32. Defendant violated 33 V.S.A. § 1919 in that Defendant sold and offered for sale and tax-stamped multiple packages and cartons of Seneca cigarettes, a brand of cigarettes that is not listed on Vermont's Directory.

Count Two: Violations of Vermont's Consumer Protection Act

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

34. Defendant engaged in unfair and deceptive acts and practices under the Vermont Consumer Protection Act in that Defendant sold and offered for sale and affixed tax stamps to multiple packs and cartons of Seneca Brand cigarettes on or about late February through early March of 2015 when Seneca Brand cigarettes were not legal for sale in Vermont.

REQUEST FOR RELIEF

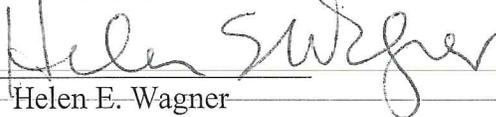
WHEREFORE, Plaintiff State of Vermont requests judgment in its favor and an Order providing the following relief:

- 35. A permanent injunction prohibiting Defendant, its agents, employees, and all other persons and entities, corporate or otherwise, acting in concert or participation with any of them from (1) selling or possessing for sale or offering for sale or affixing tax stamps upon cigarettes or RYO products not listed on the Directory to Vermont consumers and (2) violating Vermont's Consumer Protection Act.
- 36. Civil penalties of \$5,000 for each violation of 33 V.S.A. §1919 and \$10,000 for each violation of the Consumer Protection Act.
- 37. Investigative and litigation costs and fees to be paid to the State of Vermont.
- 38. Such other relief as the Court deems appropriate.

DATED at Montpelier, this 1st day of June, 2016.

STATE OF VERMONT

WILLIAM H. SORRELL
ATTORNEY GENERAL

By: 

Helen E. Wagner
Assistant Attorney General
Vermont Attorney General's Office
109 State Street
Montpelier, VT 05609
(802) 828-2508
helen.wagner@vermont.gov

Office of the
ATTORNEY
GENERAL
109 State Street
Montpelier, VT
05609